

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-23538-rdd

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5 In the Matter of:

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7 SEARS HOLDINGS CORPORATION,

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9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 February 6, 2019

17 9:17 AM

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21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: NAROTAM RAI

1 HEARING re Evidentiary Hearing

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3 HEARING re Notice of Agenda of Matters Scheduled for Hearing
4 on February 6, 2019 at 9:00 a.m.

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1 P R O C E E D I N G S

2 CLERK: All rise.

3 THE COURT: Please be seated. Okay, good morning.

4 In re: Sears Holdings Corporation. When we left off on
5 Monday, we were in the middle of continuing cross-
6 examination of Mr. Transier. Mr. Transier, you're still
7 under oath, do you understand that?

8 MR. TRANSIER: Yes, sir.

9 THE COURT: Okay. Very well. Thank you. Okay,
10 you can continue.

11 MR. GOLDSTEIN: Good morning, Your Honor. Michael
12 Goldstein, Goodwin Procter. Mr. Transier, good morning.
13 Your Honor, Mr. Transier, I have no further questions at
14 this time.

15 THE COURT: Okay, very well. Any redirect?

16 MR. GENENDER: Thank you, Your Honor. Paul
17 Genender from Weil Gotshal for the Debtors.

18 REDIRECT EXAMINATION OF WILLIAM TRANSIER

19 BY MR. GENENDER:

20 Q Good morning, Mr. Transier.

21 A Good morning.

22 Q On Monday, during cross-examination you were asked
23 questions about your October 15th emails to and from Mr.
24 Lampert, do you recall that?

25 A Yes.

1 Q Did the sentiments you shared with Mr. Lampert in any
2 way suggest you were influenced by him or ESL?

3 A No.

4 Q Were you influenced by ESL and Mr. Lampert in doing
5 your work on the Restructuring Committee?

6 A No.

7 Q Or on the Restructuring Subcommittee?

8 A No.

9 Q Did your vote to reject -- did you vote to reject ESL's
10 bid to the company on more than one occasion?

11 A Several times, yes.

12 Q Did you, in fact, vote at one point to direct the
13 company's attorneys to advise this Court that the company
14 was pivoting to liquidation?

15 A Yes.

16 Q Do you recall if you were asked about ESL's plan to
17 close three stores a month this year?

18 A Yes.

19 Q How would that compare to the stores -- to store
20 closures if this transaction is not approved?

21 A I think if it went into a liquidation, you'd close the
22 remaining 425 stores fairly quickly.

23 MR. GENENDER: I have no further questions.

24 THE COURT: Okay. Anything on that on cross? Re-
25 cross?

1 WOMAN 1: No, Your Honor, thank you.

2 THE COURT: Okay. You can step down, Mr.
3 Transier.

4 MR. TRANSIER: Thanks.

5 MR. LENDER: Your Honor, good morning. David
6 Lender from Weil Gotshal for the Debtors. For our next
7 witness we call Mohsin Meghji, the chief restructuring
8 officer and managing partner of M3 Advisory Partners.
9 That's Tab 41, Docket Number 2336. And we move at this time
10 his declaration into evidence.

11 THE COURT: Okay, I have it. Let me just swear in
12 the witness. Would you raise your right hand, please? Do
13 you swear or affirm to tell the truth, the whole truth, and
14 nothing but the truth, so help you God?

15 MR. MEGHJI: I do.

16 THE COURT: Okay. And it's M-E-G-H-J-I?

17 MR. MEGHJI: Correct.

18 THE COURT: And the first name, M-O-H-S-I-N?

19 MR. MEGHJI: Yes.

20 THE COURT: Okay. Mr. Meghji, I have your
21 declaration that was earlier submitted in this case dated
22 February 1, 2019. Sitting where you are today on the 6th of
23 February, would this declaration still constitute your
24 direct testimony in this case?

25 MR. MEGHJI: It does.

1 THE COURT: Okay, very good. So I'll admit the
2 declaration as Mr. Meghji's direct testimony.

3 MR. SERKIN: Your Honor, Joseph Serkin from Akin
4 Gump on behalf of the Creditors Committee. Before the Court
5 formally admits the declaration, the Creditors Committee
6 would like to lodge an objection under Rule 602.

7 There are two significant areas of Mr. Meghji's
8 declaration, which are based solely on hearsay. He has no
9 personal knowledge in both in connection with the business
10 plan, Paragraphs 8 through 10, and in connection with the
11 work that JLL did in the appraisal process in the real
12 estate sale process, as well as the work that others at M3
13 did in the real estate sale process. Mr. Meghji has no
14 firsthand knowledge of what was actually done.

15 THE COURT: This is -- I'm sorry, Paragraph 6
16 through 10, you said?

17 MR. SERKIN: It's Paragraph 8 through 10, Your
18 Honor. And, specifically, the first three sentences of
19 Paragraph 8 we do not object to. But beginning with "As the
20 company's chief digital officer..." the rest of that
21 paragraph, Paragraph 9, and then the first sentence of
22 Paragraph 10 confirm that the work done in connection with
23 the business plan was done by others and is not based on Mr.
24 Meghji's firsthand knowledge or any personal knowledge.

25 MR. LENDER: All right, Your Honor, I think it

1 will become clear during cross-examination that Mr. Meghji
2 was involved as the chief restructuring officer in helping
3 to oversee and put together the going forward business plan.
4 So, and to be honest, the same thing with the real estate
5 process -- it was all done under his supervision and
6 involvement as chief restructuring officer. I think it'll
7 become clear in the cross-examination what Mr. Meghji's role
8 was, if Your Honor wants to take all that into
9 consideration. But the idea that he had no personal
10 knowledge of this stuff I think will become -- it'll become
11 clear that that's just not correct.

12 THE COURT: Well, he's just describing the work he
13 did with these people. I don't think -- I mean, what is it
14 that you're saying that is being introduced for the truth of
15 the matter here as to anything?

16 MR. SERKIN: And, Your Honor, in connection with
17 Paragraphs 8 through 10, what Mr. Meghji is trying to
18 introduce and what the Debtors are trying to rely on the
19 truth for are the changes that were implemented over the
20 course of 2018 in connection with online sales, retail
21 sales, the ShopYourWay Program that is being introduced to
22 explain why the business plan going forward is viable.
23 Because they intend to rely on some of those same changes --
24 yet, they have not put forth a witness who can explain what
25 those changes were.

1 And Mr. Meghji's declaration on its face makes
2 clear that his only understanding is the first sentence in
3 Paragraph 10. I spent a good deal of time with Ms. Munjal,
4 Mr. Ladley, and others discussing the changes the two had
5 implemented. They are offering the changes for the truth to
6 support why the business plan is viable. We have not had an
7 opportunity to cross-examine the individuals who implemented
8 it. We had no understanding of what those changes were.

9 THE COURT: This is the type of (indiscernible)
10 would take. It may be right, it may be wrong but he's not
11 saying that these -- he's not... I just... I don't...
12 He's reviewing company results, which you have and he has.
13 I'm not taking that as anything more than what a CRO would
14 be provided with.

15 MR. SERKIN: Your Honor, if all we are talking
16 about are --

17 THE COURT: Well, let's go through it, all right?
18 This is ten minutes. All right, you said the two sentences
19 of 8. Let's go through those, all right? And let's see if
20 this is really a valid hearsay objection.

21 "As the company's chief digital..." Well, I'm
22 sorry. "I observed that in August and September 2018, the
23 company's same source sales numbers were healthier than they
24 had been in the preceding months, and I sought to understand
25 why." All right, you're not objecting to that? All right.

1 MR. SERKIN: No, Your Honor.

2 THE COURT: All right. Well, let's see if any of
3 the other information that you are objecting to is any
4 different than that. "Her efforts had been centered on
5 driving sales and marketing, among other things." That's a
6 problem? That's somehow hearsay? Their CRO wouldn't be
7 able to say that about his chief digital officer, what he
8 charged her to do?

9 MR. SERKIN: "Her efforts had been centered on
10 driving sales and marketing, among other things." Your
11 Honor, to the extent they are relying on what those changes
12 were for the truth --

13 THE COURT: He's not. He's just saying that's
14 what she was doing. So that part of the objection is
15 withdrawn. Do you want to spend the next 20 minutes doing
16 this? Why don't you look it over carefully and really tell
17 me what it is instead of wasting our time? All right?

18 So I will not admit this declaration until later,
19 but I want you and your colleagues to take a break and
20 really think about what you're talking about here. I do not
21 view this as a verification of the ESL business plan. Or,
22 in fact, the company's numbers. You have had experts who
23 were paid hundreds of thousands of dollars a month to vet
24 the numbers, and you have done that. I don't view this as
25 anything other than presenting the numbers for anyone to

1 vet.

2 MR. SERKIN: Your Honor, if the Debtors are not
3 offering it for the truth, then we withdraw --

4 THE COURT: Truth of what? Truth that this is her
5 job? That's why I say you're wasting our time. We can go
6 through this and your time for cross-examination will be
7 deducted for all the time we spent on this objection, unless
8 you can narrow it down to something that actually makes
9 sense under the hearsay rules.

10 "Ms. Munjal and Mr. Ladley implemented..." We're
11 doing it right now unless you want to change your mind.

12 "Ms. Munjal and Mr. Ladley implemented some changes
13 concerning how the ShopYourWay Program operated and took a
14 new approach to this offline business for apparel."

15 MR. SERKIN: That is exactly the point we're
16 talking about, Your Honor.

17 THE COURT: You think the CRO cannot testify as to
18 that? That the people working under him did this work?

19 MR. SERKIN: I had no opportunity to understand
20 what those changes were to cross-examine him.

21 THE COURT: All right, the objection is overruled
22 on that sentence. Let's keep going. "The two began to
23 apply a combination of points offerings along with pricing
24 adjustments and began pricing conducting experiments, so to
25 speak, to determine which of the initiatives would possibly

1 impact performance."

2 MR. SERKIN: That's the same objection, Your
3 Honor. We have no --

4 THE COURT: He's just describing what they were
5 tasked to do; not whether they succeeded in doing it.

6 MR. SERKIN: And in the record we have no evidence
7 that they did succeed --

8 THE COURT: Respond to my question. Is he asking
9 for anything -- is this testimony being admitted for
10 anything other than that?

11 MR. SERKIN: Your Honor, the Debtors would have to
12 speak to that. My understanding is there are --

13 THE COURT: Well, I think I can understand what
14 they're saying and I think you can, too. So that objection
15 is overruled. Eight comes in. "Ms. Munjal and Mr. Ladley
16 initiated those strategies in January and February 2018."
17 You don't think a CRO would know that -- whether they did
18 the work or not?

19 MR. SERKIN: Your Honor --

20 THE COURT: We can ask that and see, all right?
21 At least he understood that that's what they did because
22 that's what they told him. Whether it was done or not, this
23 is what the CRO did. We know at least that amount.

24 MR. SERKIN: Whether it was done or not is exactly
25 the question we're asking, Your Honor.

1 THE COURT: This is just -- I'm sorry, I'm sorry,
2 sir, I stand by what -- I am not going to let you waste our
3 time. You take a look at this after we hear him and then
4 we'll see what you're really talking about here.

5 MR. SERKIN: Okay, Your Honor, just briefly --

6 THE COURT: First of all, we're talking about a
7 business plan for a buyer, all right? So you need to
8 explain to me why that is relevant here and exactly where,
9 and we will narrow it down to its relevance. I have rarely
10 seen a business plan for a buyer ever vetted, except when
11 you're talking about adequate assurance, which is not your
12 issue.

13 MR. SERKIN: Your Honor, the business plan of the
14 buyer is based on the work that the seller did in conducting
15 their business plan, and the work they did in 2018.

16 THE COURT: Why is it relevant to know the
17 business plan of the buyer except as far as adequate
18 assurance of future performance is concerned? You need to
19 tell me that first before we spend any time on this.

20 MR. SERKIN: Your Honor, whether or not the
21 Debtors, as they remain post-sale, will be paid and whether
22 the liabilities that are allegedly being assumed will get
23 paid are absolutely relevant and this witness --

24 THE COURT: That is relevant. But I'm not -- I
25 don't really quite see why this is the case. So, again,

1 this is not the time to make this objection. We will hear
2 his testimony, we'll see what it is that he knows about the
3 work that these people did. But I don't view this as saying
4 that their conclusions are the truth. Frankly, I don't
5 think anyone can say any conclusions about a business plan
6 are the truth. It's a business plan.

7 MR. SERKIN: Your Honor, but it's based on
8 performance, past performance, and that is exactly what is
9 critical here. That is what we are trying to understand.

10 THE COURT: We all have their past performance
11 numbers.

12 MR. SERKIN: We have the numbers but what it was
13 that caused those numbers is what they are relying on go
14 forward, both for the company's business plan and for ESL's
15 business plan. And whether or not these Debtors will get
16 paid in the --

17 THE COURT: This doesn't say any of that. This
18 isn't testimony as to that.

19 MR. SERKIN: Your Honor, we can move on --

20 THE COURT: Explain to me how it is. Explain to
21 me sentence by -- all right, all right, your time is
22 deducted for the next half hour while you explain to me why
23 these three paragraphs really do what you're saying.

24 MR. SERKIN: Your Honor, there is nowhere in the
25 record where there is any --

1 THE COURT: No, no, I'm saying sentence by
2 sentence, where they are actually trying to convince me of
3 the truth that these particular things affect in a material
4 way the accuracy of the business plan, which your client's
5 relying on, too. Let's go. Paragraph 9.

6 MR. SERKIN: Your Honor, I believe we were on
7 Sentence 2. "They expanded them to the brick and mortar
8 apparel business over the course of time." We don't have any
9 understanding about how those were implemented, when,
10 exactly what changes were made, and we still don't know what
11 the strategies are.

12 THE COURT: But that's -- he's the CRO. He talked
13 -- this is his job. Do you think the CRO has to actually do
14 all the work like Jimmy Carter planning the tennis match?

15 MR. SERKIN: I don't, Your Honor. I would just --
16 in order for the record, that is not what we are saying.
17 What we are saying is there is no evidence in the record to
18 establish that the changes that were made in 2018 and
19 implemented were effective in actually changing the same
20 store sales growth and the performance of the company to the
21 extent they are attempting to rely on this --

22 THE COURT: Where does it say that?

23 MR. SERKIN: If they are not relying on this --

24 THE COURT: Where does it say that in these three
25 paragraphs?

1 MR. SERKIN: Your Honor --

2 THE COURT: That you think it says? Where?

3 MR. SERKIN: "From there..." If we move on to the
4 second to the last full sentence on Page 5, the carryover
5 paragraph. "From there, Ms. Munjal and Mr. Ladley
6 implemented some changes around supply and logistics issues.
7 Finally, in July and August 2018, they layered in some
8 traditional television and other modes of advertising, and
9 the combination of these efforts really started to improve
10 the outlook for same store sales comps."

11 To the extent they are relying on this declaration
12 and this information as evidence of what the changes were
13 and that it had an impact and changed those, that is
14 hearsay. There is no evidence in the record that those same
15 store sales comps changed as a result of the work that Mr.
16 Ladley and Ms. Munjal did.

17 THE COURT: I think they can cross-examine -- you
18 can establish your foundation for that with Mr. Meghji,
19 including in Paragraph 10, where he says, "I spent a good
20 deal of time with Ms. Munjal and Mr. Ladley and others
21 discussing the changes the two had implemented."

22 I mean, what is the purpose of a CRO other than to
23 deal with the people that work under him? I just -- you
24 know, I will take it for what he knows, all right?

25 MR. SERKIN: Understood, Your Honor. Under the

1 second category, and I will very briefly is the real estate
2 sales process that begins in Paragraph 23 -- Paragraph 23
3 through 49 describe the real estate sale process that JLL
4 performed and undertook, describes the appraisal process
5 that JLL undertook, and describes the work that Mr. Bill
6 Gallagher at M3 did. During the course of his deposition,
7 Mr. Meghji made absolutely clear that he was not directly
8 involved.

9 For example, who prepared these appraisals? And
10 I'm reading from Page 234.

11 THE COURT: We have all those people's
12 declarations. That's what I'm going to focus on. This goes
13 to his knowledge of the process.

14 MR. SERKIN: Your Honor, we don't have those
15 people's declarations. Instead, what we have --

16 THE COURT: We have a JLL expert.

17 MR. SERKIN: We have an expert. We don't have
18 anyone talking about the sale process. For example,
19 Paragraph 30 --

20 THE COURT: That's him. He's talking about the
21 sale process.

22 MR. SERKIN: Not based on personal knowledge he's
23 not, Your Honor.

24 THE COURT: He's the CRO whose...

25 MR. SERKIN: Your Honor --

1 THE COURT: I'm sorry, JLL's declaration talks
2 about what they reviewed. Right?

3 MR. SERKIN: Understood, Your Honor. Different
4 than the sales process. Paragraph 30 talks in excruciating
5 detail about emails that were sent by Naveen Jaggi, JLL,
6 Craig Meyer, JLL, Jay Koster and Blake Lacher, the co-heads
7 of Capital Markets.

8 THE COURT: Right.

9 MR. SERKIN: All individuals. And the process
10 that they are relying on for the validity of the process
11 which is what indications of interests were relied on to
12 determine the value of the real estate in the waterfall
13 analysis in the wind-down scenario, that is off -- that we
14 are alleging is off by hundreds of millions of dollars.

15 THE COURT: We have your expert, we have their
16 expert, we can discuss that. Did you ask to take those
17 people's deposition?

18 MR. SERKIN: Your Honor --

19 THE COURT: What he's saying here is what he
20 understands as the CRO. Now I guess if you want to question
21 the truth of whether these people actually did this, you can
22 do it. That's fine. Unbelievable. If, in fact, your
23 approach would work, you would win -- you would win because
24 we would not finish this process until April.

25 So I get what you're doing. I get it. I get it.

1 And I've read your client's declaration, and I've read their
2 declarations, and we'll deal with them then about the real
3 estate.

4 MR. SERKIN: Your Honor, we are simply trying to
5 make the record that we believe it's appropriate here and
6 raise the objections that we think are valid and
7 appropriate.

8 THE COURT: All right, fine, go ahead. Go ahead.
9 I am taking this as his knowledge as the CRO, going to
10 issues such as the good faith of the transaction. I guess
11 if I assumed that all these people were lying to him and
12 were going to submit fee applications based on the work that
13 they did and the like, I can assume that.

14 MR. SERKIN: Your Honor, if they are not offering
15 it for the truth we have no objection and withdraw it.

16 THE COURT: Very well. All right, that took a
17 good 20 minutes. It was really productive, sir. Now, go
18 ahead with your cross.

19 MR. SERKIN: Your Honor, we have witness binders.
20 May I hand them out --

21 THE COURT: Yes. The cross will last until when,
22 do you think?

23 MR. SERKIN: Your Honor, I suspect that it will be
24 35 minutes.

25 THE COURT: 35 minutes? Go ahead.

1 MR. SERKIN: Thank you, Your Honor.

2 CROSS-EXAMINATION OF MOHSIN MEGHJI

3 BY MR. SERKIN:

4 Q Good morning, Mr. Meghji.

5 A Good morning.

6 Q Your firm M3 Advisory Partners was first engaged by
7 Sears in roughly April or May of 2016, correct?

8 A Correct.

9 Q And that was to assist Sears with respect to liquidity
10 and treasury planning among other things, correct?

11 A Yes.

12 Q M3 first became involved in preparing the company's
13 bankruptcy filings in early October of 2018, correct?

14 A Correct.

15 Q And M3 was not engaged with Sears in an effort to
16 prepare for selling assets in connection with the bankruptcy
17 filing prior to early 2018, correct?

18 A That's correct.

19 Q Early October 2018, excuse me. Now, can we start with
20 your wind-down analysis? M3 performed a wind-down and
21 liquidation analysis that assessed the potential value of
22 the Debtor's assets in any amounts the Debtor's creditors
23 would recover on their claim in the context of an orderly
24 wind-down liquidation. That was from your declaration,
25 correct? That's the work you performed?

1 A Amongst other things.

2 Q Understood. And if you can look at Tab 4 in the binder
3 in front of you, I believe that has been marked as Joint
4 Exhibit 11. Is that the wind-down analysis that M3
5 performed and that was presented to the Restructuring
6 Committee to help them assess the value associated with the
7 ESL bid?

8 A That's a summary of the wind-down analysis and the
9 results we did.

10 Q Now, the wind-down analysis is based on a 12-month
11 orderly wind-down in liquidation beginning in January of
12 2019, correct?

13 A Yes.

14 Q And it was January 14th, specifically, the date of the
15 auction, right?

16 A Of course.

17 Q And the analysis is based on a number of assumptions,
18 correct?

19 A Yes.

20 Q One of those is that the Debtors would sell previously
21 unencumbered assets, correct?

22 A Yes.

23 Q And one of the most valuable sort of group of assets
24 that was previously unencumbered was the company's real
25 estate, correct?

1 A Yes.

2 Q And M3 advised the Restructuring Committee concerning
3 the liquidation proceeds the Debtor's estates could expect
4 to receive from the sale of the Debtor's unencumbered real
5 estate assets, correct?

6 A Yes.

7 Q Now, in connection with the value of the unencumbered
8 real estate, your testimony covers three main subjects. One
9 is the real estate sales process, correct?

10 A Correct.

11 Q The second is appraisals, correct?

12 A Yes.

13 Q And the last is M3's calculation of likely liquidation
14 proceeds, correct?

15 A Of course.

16 Q Okay. Now, let's turn to your testimony about the real
17 estate sales process. In connection with that process, the
18 Debtors engaged Jones Lang LaSalle, or JLL, as their
19 advisor, correct?

20 A Yes.

21 Q And that was done in late November-early October of
22 2018?

23 A Late November-early December.

24 Q Thank you for clarifying that. I apologize. You were
25 not the individual at the company who was responsible for

1 providing direction to JLL, correct?

2 A I'm the chief restructuring officer of the company.

3 The people who interacted directly with the JLL were really
4 two individuals: Jane Bordon, who was the president of the
5 real estate group, and Bill Gallagher, who was one of my
6 partners. Both of them reported up to me.

7 Q Okay. But you weren't the one directly interacting
8 with JLL, correct?

9 A Not on a day to day basis.

10 Q Okay. Around the time that the Debtors decided to
11 market not only their go-forward stores but the entirety of
12 the real estate assets... Strike that. Around the time
13 that the Debtors decided to market their go-forward stores,
14 they also decided to market the real estate assets, correct?

15 A Correct. Under the global vetting procedures.

16 Q And there were approximately 1,168 real estate assets,
17 is that correct?

18 A It sounds right

19 Q The deadline for any party wishing to submit a
20 nonbinding indication of interest was December 28, 2018,
21 correct?

22 A Correct.

23 Q And that was about 25 days after the distribution of
24 the JLL process letter, correct?

25 A Yes.

1 Q Now, ultimately, as a result of the real estate process
2 that was run by JLL, prospective bidders submitted a total
3 of around 440 nonbinding indications of interest, correct?

4 A Correct.

5 Q And notwithstanding that, it's correct that when
6 potential bidders asked about attending the auction, they
7 were told not to show up unless contacted the weekend
8 before, isn't that correct?

9 A It sounds right.

10 Q Now, I want to turn to the exercise M3 performed to
11 estimate the proceeds Debtors could realize in a sale of
12 their unencumbered real estate assets. So, in your direct
13 testimony, your declaration, you state that M3 estimated the
14 Debtors would recover \$561 million net of transaction costs
15 from the liquidation of the Debtor's unencumbered real
16 estate assets in connection with the wind-down or
17 liquidation, correct?

18 A Correct.

19 Q And that was what you -- the estimate you provided to
20 the Restructuring Committee, correct?

21 A That's what we included in the wind-down analysis.

22 Q And if you look at, again, Joint Exhibit 11, Tab 4,
23 Slide 5, you'll see that under the second highlighted
24 bullet, Unencumbered Real Estate Values, the recoveries
25 assumed were \$561 million of transaction costs, correct?

1 A Yes.

2 Q That amount did not include three or four properties
3 for which you belatedly received appraisals, isn't that
4 correct?

5 A Correct.

6 Q And if you were to take into account those appraisals,
7 it would increase the overall amount of approximately \$38
8 million net of transaction fees, correct?

9 A Yeah, I think about \$36-37 million. That sounds about
10 right.

11 Q And raising the amount to just a little under \$600
12 million?

13 A Yes.

14 Q Now, the analysis that M3 performed -- and, again, just
15 to clarify, JLL and others -- I think it was ANG, performed
16 appraisals on certain parcels of real estate, correct?

17 A Yes.

18 Q M3 then took that information and did another analysis
19 to determine the amount that would be included in the wind-
20 down, correct?

21 A Correct.

22 Q And that was something that was done by one of your
23 colleagues, primarily Bill Gallagher, right?

24 A Yes.

25 Q Now, that estimate was not an appraisal methodology,

1 correct? The work that M3 did?

2 A No, we did not do an appraisal.

3 Q And it was not a valuation exercise, right?

4 A No.

5 Q Instead, it was a process of applying judgment to
6 various data points and coming up with an estimated value on
7 the portfolio of unencumbered assets, correct?

8 A Yes.

9 Q And you didn't determine that methodology, correct?

10 A No, but I discussed it with Mr. Gallagher and others as
11 the process was going.

12 Q Okay. And Mr. Gallagher was the one primarily who
13 determined that methodology?

14 A Along with others at the company in discussions with
15 people at the company.

16 Q And you'd never seen that methodology applied before,
17 correct?

18 A We estimated the proceeds for that. I don't know that
19 there was a specific methodology that was sort of done
20 that's repeated. There was an exercise of judgment using
21 various data points.

22 Q Do you recall, Mr. Meghji, last week that I took your
23 deposition, correct?

24 A Yes.

25 Q And the testimony you provided, the answers you gave in

1 that deposition were true and accurate to the best of your
2 ability, correct?

3 A Correct.

4 Q Okay. On Page 260 of that deposition, talking about
5 the methodology that was employed by M3, I asked you "Who
6 determined that methodology?" And you answered, "I believe
7 that was done by Mr. Gallagher." Did I ask that question and
8 did you give that answer?

9 A Yes.

10 Q And then I asked "Have you ever seen this methodology
11 applied before?" And your answer was "I have not, no, but
12 I've not seen kind of appraisals for estimated values done
13 at this scale either." Did I ask that question and did you
14 give that answer?

15 A Yes.

16 Q And you don't know whether Mr. Gallagher has ever
17 performed this methodology before, correct?

18 A I know Mr. Gallagher was CEO of a real estate finance
19 company which I worked with him on, which was a liquidation,
20 a lot of real estate, commercial real estate both properties
21 and loans. So I know he had experience in selling real
22 estate and loans back for real estate.

23 Q Okay. And I think my question was a little different.
24 So, if we go back to Page 260 of your deposition, Line 20,
25 did I ask this question and did you give this answer? "Do

1 you know if Mr. Gallagher has ever applied this methodology
2 before?" Answer: "I don't." Did I ask that question and did
3 you give you that answer?

4 MR. LENDER: Your Honor, this is allegedly
5 impeachment to a response that he used as judgment and
6 wasn't using (indiscernible) proceeds. And he just ignores
7 the very next question where Mr. Meghji said exactly that.
8 This was the question that he asked and the answer that Mr.
9 Meghji gave him. Headline 260, Line 24 to 261 on 12.

10 Question: "You don't know one way or the other.
11 So you don't know whether this methodology is based on any
12 commonly accepted treatises in the real estate valuation
13 industry?" Answer: "No, I don't know whether it's -- you k
14 now, this was not an appraisal methodology. This was a
15 process of kind of applying some judgment to data points in
16 coming up with an estimated value on a portfolio in terms of
17 what the unencumbered properties would realize." That's what
18 he said. This is not impeachment...

19 THE COURT: Do you want to cut him off?

20 MR. SERKIN: Your Honor, I did. I didn't want to
21 be rude to Mr. Lender, but I have a limited amount of time,
22 I'm going to do my best to get in the --

23 THE COURT: I mean, I think the objection was
24 asked and answered. He said it's a judgment.

25 MR. SERKIN: Understood.

1 THE COURT: Okay.

2 MR. SERKIN: Mr. Lender has an opportunity to
3 redirect.

4 THE COURT: Okay.

5 MR. SERKIN: If he wants to probe further.

6 THE COURT: Okay.

7 Q Mr. Meghji, can we now look at what M3 actually did to
8 arrive at this \$561 million number? So, if you can look at
9 Tab 11, which is marked Joint Exhibit 60. You'll see that
10 Joint Exhibit 60, the first page is a series of emails
11 between some of your colleagues, Mr. Gallagher, and others.
12 What I want to look at is the attachment, which shows on,
13 just after the emails, a summary of the total value. And
14 then a series of Excel Spreadsheets. Do you see that?

15 A Yes.

16 Q Okay. Now, what I want to look to is the first Excel
17 Spreadsheet. I recognize that this is not easy to read, but
18 if you go down the fifth line, I want to look at Torrance.
19 And, again, why don't we step back for just a minute? So,
20 if you look at the page before, there's a summary table. Do
21 you see that? Now I just want to go back to the slide
22 before. The top says Transaction Fee Assumed 6 Percent, and
23 then it has a summary. Do you see that, Mr. Meghji?

24 A Yes.

25 Q Okay. And the estimated gross proceeds from the sale

1 of the real estate are \$634.5 million. Do you see that?

2 A Yes.

3 Q Okay. And then the net proceeds are 596 million,
4 correct? Now, the column headings going below the next page
5 to the table, if you look at the right you'll see an
6 Estimated Proceeds sort of just past midway column, 50
7 percent. The 50 percent is the deduction that was taken to
8 get to the estimated proceeds, correct? For the leased
9 properties shown on the first six pages -- or excuse me,
10 five pages of the exhibit?

11 A Yes.

12 Q Okay. And the next column over, Current High
13 Indicative Offer, that is the indication of interest, if
14 any, that was received for a particular property, correct?

15 A I believe so.

16 Q The JLL value next was the JLL appraisal value for
17 appraisals done in the October 2018 timeframe, correct?

18 A Correct.

19 Q And the JLL liquidation value were appraisals done in
20 the January 2019 timeframe, correct?

21 A Correct.

22 Q And then the ANG value were appraisals done in, again,
23 the October 2018 timeframe, correct?

24 A Yes.

25 Q Now, with respect to the nonbinding indications, you

1 weighted those nonbinding indications of interest equally
2 with the formal market appraisals received from JLL or ANG
3 in performing M3's estimate, correct?

4 A We did.

5 Q And in some instances, the indication of interest was
6 the sole basis of your view of realizable proceeds, correct?

7 A Yes.

8 Q In addition, M3 also applied a liquidation discount,
9 and that's the 50 percent for these lease properties we
10 talked about, correct?

11 A Yes. Only as against the market value appraisals or
12 the high indications.

13 Q Okay. And just to be clear, in addition to the 50
14 percent against the market value appraisals, you took that
15 50 percent discount against the indications of interest as
16 well, correct?

17 A Yes.

18 Q Okay. And so let's actually look at one of those
19 examples. In Row 28, do you see Miami?

20 A Yes.

21 Q And if you go over, you'll see that there is no
22 appraisal from Miami, from JLL, JLL Liquidation, or ANG,
23 correct?

24 A Correct.

25 Q And, instead, there's a \$9 million indication of

1 interest, correct?

2 A Correct.

3 Q And in that situation you applied the 50 percent
4 liquidation discount to the indication of interest to get to
5 \$4-1/2 million, correct?

6 A Yes.

7 Q Now, let's go back up to Torrance, where I started a
8 little earlier. That's Line 5. If you go across you'll see
9 that Torrance had a \$500,000 indication of interest, a
10 little over \$46 million JLL value, and a little over \$25
11 million ANG value, correct?

12 A Yes.

13 Q And in doing these calculations, M3 took the average of
14 those three to get to a little over \$24 million, correct?

15 A I'm sorry, can you repeat that question?

16 Q Sure. To do the process, M3 took \$500,000 high
17 indication of interest, \$46 million-plus JLL value, \$25
18 million ANG value, added them up and divided by 3, correct?

19 A Yes.

20 Q And in doing that, came up with a number of a little
21 over \$24 million, correct?

22 A Correct.

23 Q And then took the 50 percent discount to get to \$12
24 million, correct?

25 A Yes.

1 Q Now, if you can turn to Slide 7 of your wind-down
2 analysis, which was Tab 4, Joint Exhibit 11, and go to Slide
3 7, please. In this wind-down analysis -- again, this is
4 dated January 2014, the day of the auction, correct? The
5 first day of the auction, correct?

6 A Are you looking at Page 7, which is the recovery -- you
7 know, the creditor recovery matrix?

8 Q I'm looking at the first cover page of the slide,
9 January 14.

10 A Yes.

11 Q And January 14th was the first day of the auction,
12 correct?

13 A Yes.

14 Q And the information in terms of wind-down, this was the
15 most up to date information presented to the Restructuring
16 Committee, correct?

17 A Correct.

18 Q In the wind-down analysis, administrative and other
19 priority claims would have 100 percent recovery, correct?

20 A Yes.

21 Q And if you look at the Determination of Unsecured and
22 Deficiency Claims, there's a footnote, Footnote 6. Do you
23 see that?

24 A So you're looking --

25 Q I'm on Slide 7. And you'll see that in determining the

1 total amount of unsecured and deficiency claims, there's an
2 assumption of \$1 billion of protection agreement liability,
3 do you see that?

4 A Yes.

5 Q And do you agree that the estimate of the amount on the
6 books and records at Sears of the cost to service that
7 liability is approximately \$430-450 million, correct?

8 A The present value of that, yes.

9 Q And you'll also see that there's an assumption with
10 respect to deficiency claims of approximately \$1.8 billion,
11 correct?

12 A Yes.

13 Q How much of that \$1.8 billion in deficiency claims
14 would belong to ESL in a wind-down scenario?

15 A I don't know the exact amount but it would be a
16 significant portion of that, I would think.

17 Q Mr. Meghji, one other question going back to -- you can
18 actually put the wind-down analysis to the side for a
19 minute.

20 A Thank you.

21 Q Going back to the real estate valuation, we talked a
22 little bit about the methodology that M3 employed. And feel
23 free to go back and look at Joint Exhibit 60, but I think
24 when I began, there were approximately a little over 1,100
25 in the total portfolio. The number of properties that are

1 included in the valuation is hundreds less than that. And
2 it's true that there were several hundred unencumbered real
3 estate assets that you assigned no value, correct?

4 A Yes.

5 Q Mr. Meghji, I want to move to the comparison of the
6 wind-down scenario to the ESL bid. So, in assessing the ESL
7 bid, the company prepared an analysis comparing creditor
8 recoveries under the ESL bid to those in the wind-down that
9 we just looked at, correct?

10 A That's correct.

11 Q And you have called that -- and that's been called a
12 variance analysis, is that correct?

13 A Yes.

14 Q That variance analysis is reflected in Joint Exhibit
15 12, which is Tab 5 in your binder. So if you could just
16 take a look at Joint Exhibit 12, please. And if you look at
17 Slide 7, I think is the Summary Comparison...

18 A I'm sorry, are you looking at Tab 12?

19 Q I'm looking at Tab 5, which has been marked Joint
20 Exhibit 12. Apologies. Ideally, we would've had the
21 exhibit numbers and the tabs the same but we were working up
22 to the last minute to get exhibit numbers.

23 If you look at Slide 7, there's the comparison of
24 the ESL going concern bids in the wind-down. Do you see
25 that?

1 A Yes.

2 Q And you'll see that under the ESL bid, administrative
3 and other -- or, excuse me, administrative and Other
4 priority claims have an 80 percent recovery, whereas -- in
5 the ESL bid, whereas in the wind-down there's 100 percent
6 recovery, do you see that?

7 A Yes.

8 Q And if you look down at the recoveries below the
9 Adequate Protection line in the ESL bid scenario -- do you
10 see where I am?

11 A Adequate Protection 507B line?

12 Q Correct. And I'm looking at the ESL bid scenario. Do
13 you see that?

14 A Yes.

15 Q And the adequate protection, that -- whether or not you
16 included information was based solely on advice of counsel,
17 correct?

18 A Yes.

19 Q Okay. So, below that, the second lien line of credit
20 loans, the ESL second lien term loan, the second lien term
21 loans, the Dove loans, and the GLIP loan, there are certain
22 amounts, percentages of recovery, do you see that?

23 A Yes.

24 Q And how much -- what percentage of those recoveries
25 would be received by ESL?

1 A Again, I don't know the percentage of their holdings
2 but I think a substantial proportion of those were owned by
3 ESL.

4 Q Okay. And you understand that ESL is the largest
5 holder of the claims that do better in an ESL bid scenario,
6 correct?

7 A Yes.

8 Q And you agree that the benefit of a going concern
9 transaction largely approves to ESL because of ESL's claims,
10 correct?

11 A It's mathematically correct.

12 Q And, in fact, that was what you told the Restructuring
13 Committee, what you told the board, correct?

14 A Yes.

15 Q Mr. Meghji, can you look at Tab 13 in your binder?
16 This is Joint Exhibit 115. These are minutes from January
17 6, 2019. Can you look at the second to last paragraph from
18 the bottom that starts "Mr. Meghji stated...?" Do you see
19 that?

20 Can you read that paragraph out loud, please?

21 A The second to last paragraph?

22 Q Yes, Mr. Meghji.

23 A "Mr. Meghji stated that the variance analysis showed
24 that the benefit of the going concern transaction largely
25 accrued to ESL and, therefore, it was appropriate for ESL to

1 take the risk of the estate's administrative insolvency by
2 backstopping payment of the administrative claims. Mr.
3 Schrock agreed with Mr. Meghji's assessment."

4 Q Okay, you can set that aside, Mr. Meghji. I want to
5 move now to the business plan. And I want to talk about the
6 company's business plan as opposed to ESL. We talked at the
7 beginning of this hearing a little bit about the information
8 that's in your declaration. I want to move past that for
9 just a minute. If you can look at Tab 1 of your binder.
10 Mr. Meghji, is Tab 1 the company's business plan that you
11 referred to in your declaration?

12 A Yes.

13 Q If you look at Slide 7, in the Assumptions, the third
14 bullet down, there's a statement that "Management
15 operational initiatives drive improving same store sales
16 comps of..." and there are three same store sales comps
17 predictions for 2019, 2020, and 2021. Do you see that?

18 A Yes.

19 Q And for 2019 it is negative 2.4 percent, correct?

20 A Yes.

21 Q Now, at the time of your deposition, the current same
22 store sales growth assumed in the DIP forecast was negative
23 15 percent, correct?

24 A Yes.

25 Q And your understanding that the assumption of negative

1 2.4 percent same store sales growth for 2019 is based on
2 continuing improvements achieved in 2018, correct?

3 A Can you repeat the question?

4 Q Sure. Your understanding of that -- what went into
5 that assumption of negative 2.4 percent same store sales
6 growth is based on improvements that were begun in 2018 and
7 achieved in 2018, and that will continue forward in 2019,
8 correct?

9 A They were based on the process the management team went
10 through from January-February 2018 through August-September
11 2018, and I believed -- and I do believe that that process
12 can be replicated by NewCo after bankruptcy.

13 Q Now, those improvements are based on initiatives that
14 we saw implemented by Mr. Ladley and Ms. Munjal, correct?

15 A Yes.

16 Q And, specifically, ShopYourWay initiatives really drove
17 those improvements, correct?

18 A No.

19 Q Well, if I wanted to talk to someone about how they
20 were going to replicate the improvements over the course of
21 2018 by using ShopYourWay in 2019, I would have to talk to
22 Mr. Ladley or Ms. Munjal, correct?

23 A Well, I spoke to them and they had explained how they
24 had done it. We had had many discussions around this topic.
25 As I indicated to you in my deposition, it was a combination

1 of how ShopYourWay was implemented, pricing changes, various
2 other things around minimum shipping orders, etc.

3 Q Understood, Mr. Meghji.

4 A It was a combination of all of those things that led --

5 Q And I know what you heard. And we've heard in your
6 declaration what you've heard. What I want to know is if I
7 wanted to talk to someone about how they were going to
8 replicate the improvement and performance over the course of
9 2018 by using ShopYourWay in 2019, and on a faster timeline,
10 I would need to talk to Ms. Munjal and Mr. Ladley, right?

11 A Correct.

12 Q Okay, now, let's look for a minute at the ESL business
13 plan. It is included in Tab 2, it's Joint Exhibit 9. Mr.
14 Meghji, you considered the ESL business plan to better
15 understand NewCo's liquidity picture and viability as a
16 going concern, correct?

17 A Yes.

18 Q And understanding ESL's liquidity picture is important
19 to make sure that the liabilities that ESL is assuming are
20 capable of being discharged, correct?

21 A Yes.

22 Q You also requested ESL's liquidity analysis, correct?

23 A Sorry. Say that again, please?

24 Q Sure. You requested ESL's liquidity analysis, right?
25 We were looking at the business plan in Joint Exhibit 9.

1 I'm asking about the liquidity analysis.

2 A Yes, they did.

3 Q And you requested that after the auction, correct?

4 A Yes.

5 Q You understand that in ESL's business plan, ESL
6 projects a negative 1 percent same store sales growth in
7 2019 as opposed to the negative 2.4 percent that the company
8 projected, correct?

9 A I do.

10 Q And you have done no specific analysis to determine
11 whether or not you believe ESL can achieve negative 1
12 percent same store sales growth as opposed to the negative
13 2.4 percent projected for the company, correct -- or by the
14 company, correct?

15 A I have not.

16 Q And you simply presumed that ESL had some other
17 thoughts and ideas around what they could do to get that
18 down, correct?

19 A Yes.

20 Q And you did not provide any advice to the Restructuring
21 Committee or any individual member of the Restructuring
22 Committee at any point that the ESL business plan was
23 viable, correct?

24 A No, I have not discussed that.

25 Q I want to ask you very quickly about allocation. Mr.

1 Meghji, you've not seen any allocation of the purchase price
2 ESL is paying in connection with this transaction that
3 allocates value to the specific assets being purchased,
4 correct?

5 A I have not.

6 Q Mr. Meghji, let's move now to Administrative Solvency.
7 Since the beginning of this case, it was very important for
8 the company that the estates remained administratively
9 solvent, correct?

10 A Yes.

11 Q And in your declaration you talk about an
12 administrative solvency analysis that the company performed,
13 and if you look at Tab 6, which is Joint Exhibit 13, that is
14 the administrative solvency analysis you were talking about
15 in your declaration, correct?

16 A Yes.

17 Q Okay, I'm going to actually turn now to Tab 12, Joint
18 Exhibit 141, which contains the same analysis but it's just
19 a little easier to read.

20 A Thank you.

21 Q And just quickly, Tab 12, the cover email is an email
22 that was sent the evening of January 16th. So this was
23 after the ESL bid had been agreed to by the Restructuring
24 Committee but before the auction was closed and the
25 agreement was finalized, correct?

1 A Yes.

2 Q And if you look at Slide 1 of the analysis you'll see
3 that there's a \$62 million pro forma additional value
4 required in order to get the company to solvency, correct?

5 A Correct.

6 Q The left hand side, 503B9 claims. You'll see then there
7 was an estimated amount of \$173 million for 503B9 claims,
8 correct?

9 A Yes.

10 Q And ESL's liability, your understanding, is capped at
11 \$139 million, correct?

12 A Correct.

13 Q You understand no bar date has been set by 503B9
14 claims?

15 A Yes.

16 Q And you can't tell the Court today what's been done to
17 reconcile the claims made in this bankruptcy proceeding on
18 the docket and the claims or potential claims on the
19 company's books and records, correct? To get to that \$173
20 million number?

21 A I'm going to have to ask you to repeat the question.

22 Q Sure. You can't tell the Court what has been done with
23 respect to any reconciliation as between the claims, the
24 503B9 claims that have been filed and the potential claims
25 that are contained on the company's books and records,

1 correct?

2 A I can't. They have not been reconciled, to my
3 knowledge.

4 Q And you don't know what the amount of inventory
5 purchased across all of the Debtor entities during the 20
6 days pre-filing this, do you?

7 A Not off the top of my head.

8 Q Okay, you don't know whether it's 200 million, 300
9 million, or 400 million, correct?

10 A I just said I didn't know.

11 Q And you understand that the 503B9 claims have increased
12 by \$10 million in your second to most recent analysis that
13 was provided on February 3rd, correct?

14 A Yes.

15 Q You also have no understanding of the mechanics of how
16 the \$139 million in 503B9 claims that ESL is purporting to
17 assume will be paid post-close, correct?

18 A I think as we've discussed at my deposition, ESL
19 assumed that liability. The specific mechanics of how the
20 claims are determined, and validated, and paid out, which
21 will be the context of the plan process, remain to be worked
22 out.

23 Q Do you know whether ESL is actually assuming those
24 liabilities, meaning that the entity that has a claim
25 against the Debtor will now have a direct claim against ESL?

1 A That's my understanding, but I'm not a lawyer. As a
2 businessperson, my understanding is they will assume that
3 liability and pay it.

4 Q Okay. And as a businessperson, that was your
5 understanding. So if the APA says something different,
6 that's not -- that has nothing to do with what your business
7 understanding is, correct?

8 A I'm looking at who's going to be economically
9 responsible for the liability.

10 Q Okay. Thank you, Mr. Meghji. And as far as making
11 sure that the right people are paid the right amounts at the
12 right time in terms of the mechanics, that's a discussion
13 you expect to have with ESL at some point, correct?

14 A Yes. So the estate will be involved in determining
15 that as well.

16 Q Mr. Meghji, I want to turn now to a topic of discussion
17 from Monday's hearing, the accounts payable. That's the
18 second category on Slide 1. The accounts payable show \$196
19 million of estimated accounts payable. Do you see that?

20 A Yes.

21 Q And ESL has agreed to assume up to \$166 million of that
22 liability, correct?

23 A Correct.

24 Q The \$196 million made up of merchandise and non-
25 merchandise payables that are estimated to be on the books,

1 correct?

2 A Yes.

3 Q And those are payables received after filing that have
4 not been paid for yet, correct?

5 A Correct.

6 MR. SERKIN: Your Honor, may I approach? I have a
7 copy of the APA, and I understand the Court's admonishment.
8 I am not asking him to interpret or read provisions; it's
9 just important to understand exactly what the \$166 million
10 is, and it's laid out clearly here.

11 THE COURT: So you have questions on what? On
12 what the payments are?

13 MR. SERKIN: On what the agreement is and whether
14 there is an agreement.

15 THE COURT: Well --

16 MR. SERKIN: It is three pages, Your Honor. It's
17 a short line of questioning. And I think it will clarify
18 for the Court where we were on Monday.

19 THE COURT: Well, I read the provision. I read it
20 again this morning, so I don't know what... You don't need
21 to clarify where it is or what it says to me. If you have
22 questions of the witness about what these payables are
23 comprised of or something like that, I understand, but...

24 MR. SERKIN: Your Honor, let me see if I can do
25 this way.

1 THE COURT: Okay.

2 Q Mr. Meghji, your understanding is that -- your
3 businessperson's understanding is that ESL will agree to
4 take on up to \$166 million in accounts payable, correct?

5 A Yes.

6 Q And you understand that in the APA, those payables, at
7 least in the version on the docket, are defined as, quote,
8 Capital O, "Other Payables," correct?

9 MR. LENDER: Wait, Your Honor, they're asking him
10 to interpret the --

11 MR. SERKIN: I'm not, Your Honor. I'm asking for
12 his understanding of what is included in those payables.

13 THE COURT: Well, the section says Other Payables.

14 Q Mr. Meghji, Other Payables as defined to mean the
15 accounts payables set forth on Schedule 1.1G, do you
16 understand that?

17 A Sure.

18 Q Have you ever seen a 1.1G?

19 A I don't recall.

20 MR. SERKIN: Your Honor, may I approach? I have a
21 document that we are marking for identification as Exhibit
22 181, which is the first several pages to a draft set of
23 schedules we received in the course of production on this
24 matter.

25 THE COURT: It's a draft, right?

1 MR. SERKIN: It is a draft, Your Honor.

2 THE COURT: Look, I haven't seen Schedule 1.1G. I
3 have the same question you had, which is what is it? So I
4 think rather than questioning Mr. Meghji on it, we should
5 put the question to ESL. Obviously, I'm not approving the
6 agreement that has a blank schedule to it and is contrary to
7 the assumptions in the sale motion.

8 MR. SERKIN: Your Honor, what I'm trying to
9 understand from this witness, who is the witness who
10 understands the \$166 million, is whether there is even an
11 agreement on the 166... The agreement is they will assume
12 up to 166 million; we don't know if they've agreed to any.
13 And that's what this shows. It simply has --

14 THE COURT: What is your understanding as to
15 whether -- of the purpose of the schedule that was to be
16 attached to the agreement and so far isn't as far as the
17 defined term "other payables?"

18 MR. MEGHJI: My understanding is that they would -
19 - ESL would assume up to \$166 million of merchandise and
20 non-merchandise payables that were post-petition payments.

21 THE COURT: Do you know why it was referenced in
22 terms of the schedule as opposed to just saying that
23 definitionally?

24 MR. MEGHJI: I don't specifically, no.

25 THE COURT: Okay.

1 Q Mr. Meghji, if we can go down again, continue on slide
2 7 -- excuse me, slide 1, from tab 12, exhibit 141 to the
3 cure cost. Do you see that?

4 A Yes.

5 Q And there's a \$200 million number assumed for cure
6 cost, correct?

7 A Yes.

8 Q You did not determine that \$200 million, correct --
9 \$200 million number, correct?

10 A Not personally.

11 Q And you don't think anyone at M3 was involved in
12 determining whether the \$200 million was a correct estimate,
13 correct?

14 A I believe the cure cost number was estimated by
15 Deloitte.

16 Q Is it your understanding that cure cost assumed by ESL
17 could include cure cost related to the Debtor's encumbered
18 real estate that would be transferred to ESL?

19 A I think cure costs could include any cure costs
20 relating to any contract.

21 Q And you don't have an understanding with respect to
22 real estate assets how much of this \$200 million relates to
23 encumbered real estate versus unencumbered real estate,
24 correct?

25 A I don't.

1 Q Mr. Meghji, has a transition of services agreement been
2 agreed to at this point?

3 A I think one is being discussed and negotiated.

4 Q Do you have an understanding of the economic terms of
5 that agreement, meaning, specifically, which entity, NewCo
6 or Debtors will be obligated to pay what amounts to each
7 other over what time?

8 A No, I don't think that's been finalized.

9 Q Have you done any analysis to determine whether the
10 Debtors will have the liquidity to pay the amounts in the
11 transition services agreement going forward, to the extent
12 there are any amounts required to be paid by the Debtors?

13 A Well, those amounts haven't been agreed yet.

14 Q I want to talk for a minute about some other potential
15 expenses that appeared in the proposed sale order. Again, I
16 am not asking you to look at the order and interpret it.
17 But are you aware of any costs associated with real property
18 or leases that are being transferred to ESL other than cure
19 costs that would remain with the Debtors?

20 A Property taxes payable is an example of cost that would
21 be transferred to ESL.

22 Q Other than property taxes payable, anything else?

23 A Not that I can think of right now.

24 Q What about insurance, rents, other maintenance charges,
25 promotional funds? Is there anything else that you have

1 estimated would remain with the Debtors?

2 A Would remain with the Debtors after --

3 Q After -- post-close?

4 A I think it's really just payroll costs through the
5 closing date, as well as payroll-related costs.

6 Q And what I want to ask specifically is about with
7 respect to designated leases. Are you aware -- have you
8 done any analysis of the amount of cost that would remain
9 with the Debtor's post-close outside of cure costs?

10 A No, I have not.

11 Q Do you know whether the Debtors... Strike that. Have
12 you done any analysis of any amounts that the Debtors could
13 be liable for for tort liability at any of their stores from
14 petition date until close?

15 A No.

16 Q Mr. Meghji, if you could look at Tab 8.

17 THE COURT: You're over your time. Do you have a
18 lot more to go?

19 MR. SERKIN: I do not, Your Honor.

20 THE COURT: Okay.

21 MR. SERKIN: This is the last category I intend to
22 cover.

23 THE COURT: Okay. Fine.

24 Q Mr. Meghji, Exhibit -- Joint Exhibit 48, which is at
25 Tab 8 is a weekly tracking report tracking the

1 administrative solvency of the company, correct?

2 A Yes.

3 Q Okay. And this is something you are ultimately
4 responsible for and that you are tracking on a regular
5 basis, correct?

6 A Correct.

7 Q And Tabs 9, 10, and 16 are the tracking reports. And
8 just for the record, Tab 9 is Joint Exhibit 166, Tab 10 is
9 Joint Exhibit 167, and Tab 16 is Joint Exhibit 167A. Those
10 are the updated tracking reports over the course of the last
11 week, correct?

12 A Yes.

13 Q And if you look at the most recent one, the one we
14 received last night at 9 p.m., it looks like the shortfall
15 is \$43 million. Do you see that?

16 A Yes.

17 Q And the one before, which was Tab 10, the shortfall was
18 \$35 million, correct?

19 A Yes.

20 Q And that was two days earlier on February 3rd?

21 A Correct.

22 Q And is it fair to say that the amount of the shortfall
23 has increased and decreased over the last week?

24 A Has increased and decreased?

25 Q The amount of the shortfall has both increased and

1 decreased over the last week, correct/

2 A Yes.

3 Q Okay. You mentioned -- there's one item I want to
4 discuss that you mentioned. Payroll. The payroll
5 obligations of the Debtors -- so, the amounts paid to
6 employees at close, was not included on the January 23rd or
7 January 25th tracker, correct?

8 A It was not but we had discussed it with the
9 Restructuring Committee on that call, and indicated to them
10 that that was an amount that we were working to estimate,
11 and it would be included on the next one.

12 Q So it was an amount indicated on which call?

13 A On the January 23rd call there was just a discussion
14 kind of.

15 Q On the January 23rd call with the Restructuring
16 Committee, you mentioned the payroll obligations at close
17 that the Debtors would have?

18 A Correct, yes.

19 Q And over the course of the last week, that item has now
20 been included on the tracker, first at \$39 million and now
21 last night at \$45 million, correct?

22 A Yes.

23 Q And that amount was not included until after the
24 committee filed its objection, correct? On the tracker?

25 A I'm not sure it had anything to do with the committee's

1 objection.

2 Q Okay. And, Mr. Meghji, I just want to make sure I
3 understand. With respect to -- I recognize there are a lot
4 of numbers on the tracker, both items that can lead to a
5 greater amount of insolvency and a less amount of
6 insolvency. With respect to the \$166 million we've been
7 talking about, in the event that ESL does not agree to the
8 full \$166 million, that would increase the amount of
9 administrative insolvency, correct?

10 A The 166 million would negatively impact administrative
11 solvency, yes.

12 MR. SERKIN: Thank you, Your Honor.

13 THE COURT: Okay. Does anyone else want to --
14 have any questions of Mr. Meghji? Okay, any redirect?

15 MR. LENDER: Yes, please, Your Honor.

16 THE COURT: Okay.

17 REDIRECT EXAMINATION OF MOHSIN MEGHJI

18 BY MR. LENDER:

19 Q A couple of items. Mr. Meghji, first question is -- you
20 were asked by Mr. Serkin about Tab 13 which were some
21 meeting minutes dated January 6, 2019. And you were asked
22 some questions about some comments attributed to you. Do
23 you recall that?

24 A Yes.

25 Q Did the -- at the time of January 6th when you made

1 those comments, did that reflect the final terms of the
2 deal?

3 A No.

4 Q You were also asked by Mr. Serkin about an analysis
5 that you did comparing projected recoveries between a going
6 concern sale versus a wind-down, do you recall that?

7 A Yes.

8 Q Let's be clear. Based on your analysis, under which
9 scenario did you conclude that creditors did better?

10 A On the ESL sale.

11 Q And is that limited just to ESL or did that also
12 include other creditors as well?

13 A No. It included other creditors as well.

14 Q Mr. Meghji, under which scenario do workers do better,
15 to your understanding?

16 A Under the ESL sale.

17 Q And under which scenario do vendors do better?

18 A Under the ESL sale scenario.

19 Q Mr. Meghji, is administrative solvency guaranteed under
20 the wind-down scenario?

21 A No.

22 Q Now, it seemed like Mr. Serkin was questioning the
23 methodology you and your team use to try to come up with the
24 anticipated proceeds in a wind-down scenario. So, I wanted
25 to ask you a couple of questions about that. First of all,

1 do you believe that the method that you and your team used
2 to calculate Debtor's cash proceeds from the sale of the
3 real estate assets in a wind-down scenario was reasonable?

4 A Absolutely.

5 MR. SERKIN: Objection, Your Honor. The opinion
6 of this witness --

7 THE COURT: Well, if it leads to something else.
8 But that in itself, it's not an expert opinion.

9 Q What were -- well, let me ask you this. Explain
10 exactly how did you come up with your methodology? What did
11 you do?

12 A So, the methodology --

13 MR. SERKIN: Objection, Your Honor. He testified
14 that he didn't come up with the methodology. We've
15 established no foundation.

16 Q What was the methodology that you and your team used to
17 come up with these valuations?

18 A The methodology that was used by the company was to
19 essentially take the market value appraisals, the highest
20 indication of interest, average those -- and I'm summarizing
21 here -- discount those by 50 percent and apply that as sort
22 of the estimated proceeds.

23 In the case where JLL had done the liquidation
24 appraisals in January 2019, we simply used those as the
25 basis for what the estimated proceeds were. That

1 methodology, I believe, based on my experience as well as
2 the discussions I've had with Mr. Gallagher --

3 MR. SERKIN: Objection, Your Honor.

4 A -- around --

5 THE COURT: Why don't you stop for a second? Let
6 me ask the question differently. Why didn't you question
7 that methodology, as the company CFO?

8 MR. MEGHJI: Your Honor, I'll explain exactly why.

9 THE COURT: Okay.

10 MR. MEGHJI: I sat on the board of Toys R Us,
11 which went through a property liquidation where the leases -
12 - 35 percent of the leases were sold for a discount of 56
13 percent from appraised value. So, applying a 50 percent
14 discount to the data points we had on various appraisals and
15 high indications of interest because there had been no
16 diligence done by any of the buyers. Some of them on an
17 individual property basis you could certainly identify some
18 properties where the bids were too high or too low. But
19 this was -- these individual bids went both ways.

20 As a whole, when we looked at the portfolio, it
21 seemed very reasonable to me to apply a 50 percent discount
22 to the average of those data points.

23 THE COURT: Okay.

24 MR. SERKIN: Thank you.

25 Q Now, Mr. Meghji, you were also asked --

1 THE COURT: Can I interrupt you for a second?

2 MR. LENDER: Yes.

3 THE COURT: I want to make sure -- when you say
4 you applied the highest indications of interest, I want to
5 make sure I understand. You're not saying that you applied
6 those only where it was the highest value. You applied
7 whatever was highest?

8 MR. MEGHJI: Yes.

9 THE COURT: So even if it was \$500, you would
10 apply it?

11 MR. MEGHJI: Yes.

12 THE COURT: Why did you not question that approach
13 and say, well, this is obviously 10 times lower than the
14 appraisal. Why would we factor that in?

15 MR. MEGHJI: So, Your Honor, the other analysis I
16 did, we looked at 145 properties where there were
17 indications of interest, appraisals, and so forth, and bids
18 for all of these properties, where you had multiple bids for
19 certain properties. We compared those to estimated
20 liquidation proceeds.

21 For those 145 properties where we had multiple
22 bids, our estimated liquidation proceeds were about \$370
23 million. The highest aggregate bid for those properties --
24 this is the check and balance I did -- were about 365
25 million. The lowest bids were 282 million.

1 So, the methodology we applied did not simply
2 discount the indications of interest. It applied market
3 value appraisals, averaged those with the highest indication
4 of values... And the other data point I used was had we
5 simply excluded all of the indications of value from that
6 analysis, the total impact of that would be reduced by \$70
7 million.

8 So, it was very much within the margin of error.
9 The way I looked at the \$561 million was that -- and what I
10 advised the Restructuring Committee, as that within plus or
11 minus 20 percent, that was a reasonable band to assume as
12 liquidation proceeds.

13 THE COURT: So you're saying the delta if you
14 excluded the expressions of interest was approximately \$17
15 million?

16 MR. MEGHJI: 70. Seven-zero.

17 THE COURT: Seven-zero?

18 Mr. MEGHJI: Yes.

19 Q Then just to further on that -- and if you had, for
20 example, instead of applying a 50 percent discount but you
21 applied the 56 percent discount that you actually saw in the
22 real world in toys, that delta presumably would be even
23 smaller, correct?

24 A Correct.

25 Q And, by the way, just so we have it clear, the stores

1 that were being sold, the size of the stores and toys, how
2 did they compare to the size of the stores we're talking
3 about in Sears?

4 A Sears and K-Mart have much bigger stores. The toy
5 stores were much smaller, therefore, arguably much more
6 marketable.

7 Q Now, just to go on to a different topic, you also
8 talked about the solvency analyses that you had done. Mr.
9 Serkin asked you about the original projection of 62
10 million. Is the current projected shortfall less than \$62
11 million?

12 A Yes.

13 Q And what is the current projected shortfall?

14 A It's \$43 million.

15 Q And have you also come up with a calculation of
16 projected mitigating items, if you will? Other sources of
17 revenue to make up that differential?

18 A Yes.

19 Q And how much is the current anticipated improvements,
20 the mitigating items, if you will?

21 A \$125 million.

22 Q Now, Mr. Meghji, did M3 solvency analysis include the
23 value of the (indiscernible) or the land ends claims against
24 ESL that are being retained?

25 A It did not.

1 Q And, if necessary, can you also use the 35 million
2 payment to be paid by ESL to fill any administrative
3 shortfall?

4 A Yes.

5 Q You were also asked about cure costs by Mr. Serkin. To
6 your understanding, is there any cap on the cure amounts?

7 A No.

8 Q And is it possible that some of the cure amounts would
9 actually include 503B9 claims?

10 A Yes.

11 MR. SERKIN: That's it, Your Honor. Thank you.

12 THE COURT: Why would they include 503B9 claims?

13 MR. MEGHJI: To the extent that cure costs
14 included settling 503B9 claims, they would reduce -- they
15 would essentially reduce the 503B9 pool.

16 THE COURT: Okay. I.e., it's not just real estate
17 cure, it's --

18 MR. MEGHJI: Exactly.

19 THE COURT: Okay. Any re-cross?

20 MR. SERKIN: Your Honor, very briefly.

21 RE-CROSS EXAMINATION OF MOHSIN MEGHJI

22 BY MR. SERKIN:

23 Q Mr. Meghji, in Toys R Us, can you tell the Court what
24 the difference was between the industrial assets available
25 at Toys R Us versus the industrial assets available at

1 Sears?

2 THE COURT: I'm sorry, I didn't -- industrial?

3 MR. SERKIN: Industrial.

4 THE COURT: Okay.

5 A Yeah, I was referring more to the store leases than the
6 industrial assets.

7 Q Okay. Can you explain the difference between the
8 tenure of the store leases in the Toys R Us case versus the
9 tenure of the store leases here?

10 A I think the tenure in the toys leases were shorter.

11 Q The toys leases were shorter, and they were current,
12 correct, relative to these leases?

13 A Maybe as a generalization.

14 Q Right. Meaning that the value available on toys was
15 significantly less than the value available in this case,
16 correct?

17 A Potentially. But I think there was a sort of broader
18 issue here around marketability of the size of the -- you
19 know, of these stores, and the volume, and the compressed
20 timeframe under which this would happen.

21 Q You were asked, Mr. Meghji, about the \$125 million of
22 potential opportunities, correct?

23 A Yes.

24 Q Can you look at Tab 16, please? Joint Exhibit 167A.

25 And if you look at Slide 5, Slide 5 identifies a number of

1 those opportunities and actions. Do you see that?

2 A Yes.

3 Q Can we go through one by one and explain to the Court
4 which of these opportunities expire at close? So, the first
5 one, the prescriptions. Is that something that the company
6 can take advantage of post-closing?

7 A No, this one's actually done. So, I think an appraisal
8 was received a couple of days ago, so it's been -- it's
9 done.

10 Q So is that number included in the \$43 million
11 shortfall? Meaning it's already benefited the company and
12 gotten the company to only \$43 million in the hole?

13 A This really applies to the conditions to close summary,
14 not the solvency amounts.

15 Q The next one, the inventory, that \$40 million. Is that
16 an opportunity, that \$40 million that goes away at close?

17 A It doesn't go away at close. It's excess inventory
18 over and above the minimum limit that we have. And so what
19 we would do there is monetize that inventory after closing.

20 Q Okay, so just so we're clear and so we all understand,
21 if you look at Slide 4, the first category, ADL collateral -
22 - the cushion there, the \$40 million, that's the \$40 million
23 opportunity you're talking about, correct?

24 A Correct.

25 Q And so what that means is there's an additional \$40

1 million in the stores or in the pipeline to the stores that
2 Sears, that the Debtors can access and monetize, correct?

3 A Can you repeat the question?

4 Q Sure.

5 A When you say pipeline, I'm not too...

6 Q Maybe you can explain it better. That \$40 million in
7 excess inventory, what you're suggesting is that the Debtors
8 can monetize that \$40 million to make up an administrative
9 claims whole, correct?

10 A Right. So, if you look at Footnote Number 1 on Page 4,
11 the 1697 consists of 1.579 billion of inventory, credit card
12 receivables of 74, pharmacy receivables of 7, and then the
13 pharmacy script value of 37. Essentially, there's a \$40
14 million cushion and we could move inventory out of the Sears
15 kind of -- you know, before we hand it over to NewCo and
16 sell it separately.

17 Q Before close?

18 A Before close, yes.

19 Q What plans do you have to move \$40 million worth of
20 inventory out of the stores between now and Friday?

21 A We have created some contingency plans around
22 potentially either moving inventory, or we may even do that
23 in part with receivables, with credit card receivables. So
24 it doesn't just have to be inventory.

25 Q If that doesn't happen by Friday, that opportunity goes

1 away, correct?

2 A I think we have it in hand.

3 THE COURT: I'm sorry, I didn't hear that.

4 A I think we have a plan in hand to either move
5 receivables or inventory by Friday.

6 Q I'm sorry, maybe I missed it. What is that plan?

7 A We have the ability to move inventory out of RDCs into
8 stores where necessary. It would not necessarily be the
9 full 40 million. We're also looking at some receivables
10 that we may be able to move -- elect those as opposed to
11 inventory.

12 Q So, literally, it is taking trucks and moving industry
13 from distribution centers out of distribution centers to the
14 currently 80 GOB sales that are happening?

15 A Or setting it aside.

16 Q Okay. And that has to happen before the anticipated
17 close on Friday, correct, assuming the Court approves the
18 sale?

19 A I think subject to agreement with ESL we can agree to
20 set that aside and not have to move it to the stores.

21 Q Do you have that agreement with ESL?

22 A No, we're discussing that as part of the transition
23 services agreement.

24 Q Next one, Specified Receivables, \$26 million. Does
25 that go away at close?

1 A No, it does not. We have a cushion of \$52 million and
2 we've estimated that about 50 percent of that would be
3 collateral.

4 Q Okay. And, again, just so we're clear, if you look at
5 Slide 4, Specified Receivables is the second category down.
6 Do you see that?

7 A Yes.

8 Q And the cushion, that's the \$52 million you're talking
9 about, correct?

10 A Yes.

11 Q And you estimate that you can collect \$26 million of
12 that, half of it, correct?

13 A That's what we've estimated, yes.

14 Q And you don't need to actually collect that before the
15 closing, correct?

16 A Correct.

17 Q The 503B9 claims, back to Slide 5. Is that an
18 opportunity that goes away at close?

19 A No.

20 Q The Accounts Payable, is that an opportunity that goes
21 away at close?

22 A No.

23 Q What is that, the \$5 million?

24 A The \$5 million basically is dispute accounts payable.
25 So, it may be damaged goods, it may be sort of just items

1 that get there. So it's really working that through with
2 individual vendors around disputed accounts payable.

3 Q And is that \$5 million included in the \$166 million
4 that you help ESL assume?

5 A I think... It partly is, but that number is moving
6 around daily depending on how much we pay to suppliers. So
7 we're kind of managing the accounts payable and the senior
8 DIP balance over the next couple of days in terms of what we
9 pay. So, for instance, if we pay \$5 million tomorrow, then
10 that would take the accounts payable down. If we don't,
11 it'll leave it higher.

12 Q Okay. And just so we're clear, that's a way of
13 managing cash, not actually reducing liabilities overall
14 net-net, correct?

15 A It's both. It's both. We've managed our debtor in
16 possession balance down as of last night to \$854 million.
17 So we're daily managing that.

18 Q And if you're able to manage it below \$850 million to,
19 say, \$825 million, then ESL would not have to take \$25
20 million of liabilities, correct?

21 A Under the terms of the agreement, correct.

22 Q Let's look at one more on Slide 5, the \$35 million
23 holdback receivables. Do you see that? It's the last
24 category on Slide 5.

25 A Yes.

1 Q And that includes a \$28 million deposit that is
2 currently with First Data, the credit card vendor that Sears
3 uses, correct?

4 A Yes.

5 Q And that opportunity, that \$28 million opportunity goes
6 away at close, correct?

7 A I don't believe so. I think that we are discussing it
8 with counsel, so I'm waiting for some clarity and guidance
9 from them. But I don't believe that it necessarily goes
10 away.

11 Q Well, First Data hasn't agreed to return that \$28
12 million, have they?

13 A It has not yet agreed to do that, yes.

14 Q Mr. Meghji, if we can go back to an earlier tracker.
15 It's at Tab 7. This is Exhibit 14. It was the exhibit
16 attached to your declaration. And if you look at Slide 4,
17 those are the opportunities listed there. For specified
18 receivables do you see an SHO receivable of \$34 million?

19 A Yes.

20 Q What happened to that?

21 A I think some of that has been -- I don't know the exact
22 amount, but some of that has been collected. As I mentioned
23 to you earlier, I think our debtor in possession senior DIP
24 balance as of last Friday was about 893 million. As we've
25 collected some of these receivables, that balance has come

1 down. As of last night, it was 854 million. So it's come
2 down by \$40 million. Some of those--some of that has to do
3 with collecting those. I don't remember the exact amount.

4 Q And last night, though, the overall amount of the gap
5 to solvency increased by \$8 million from the last report,
6 correct?

7 A Correct.

8 MR. SERKIN: Thank you, Your Honor.

9 THE COURT: Okay. Anything on that?

10 MR. LENDER: Yeah, very quick, Your Honor.

11 RE-DIRECT EXAMINATION OF MOHSIN MEGHJI

12 BY MR. LENDER:

13 Q Mr. Meghji, just going back to Tab 16 in your book,
14 Joint Exhibit 167A, Mr. Serkin went through all the
15 different opportunities listed on Page 5. Do you remember
16 that?

17 A Yes.

18 Q Is an additional opportunity not listed here the claims
19 preserved against ESL?

20 A Yes.

21 Q Is an additional opportunity not listed here the \$35
22 million payment?

23 A Yes.

24 Q So that would be in addition to the \$125 million here?

25 A Absolutely.

1 Q Thank you.

2 THE COURT: Can you sit down, sir?

3 MS. MISHKIN: Your Honor, Jessie Mishkin, on
4 behalf of the Debtors. The Debtors would like to call
5 Michael Welch of Jones Lang LaSalle Valuation and Advising
6 Services.

7 THE COURT: Okay.

8 MS. MISHKIN: And respectfully submit into the
9 record his declaration, which was filed as ECF Number 2342,
10 and I believe is at Tab 43 of your binder. Mr. Welch is in
11 the courtroom today and available for cross-examination.

12 THE COURT: Okay.

13 MS. MISHKIN: And at this time, on the basis of
14 his declaration, which sets forth his testimony and
15 opinions, we would like to tender Mr. Welch as an expert
16 witness with respect to the two opinions that are summarized
17 in Paragraph 13 of his declaration.

18 Those are that the Debtors applied a fair and
19 reasonable methodology to determine the liquidation value of
20 their real estate assets, and that there are efficiencies
21 that the committee's expert, Mr. Greenspan, finds in the
22 Debtor's methodology that are not prevalent.

23 THE COURT: Okay, could you take the stand, sir?
24 You can sit down. Would you raise your right hand, please?

25 MR. WELCH: Yes, sir.

1 THE COURT: Do you swear or affirm to tell the
2 truth, the whole truth, and nothing but the truth, so help
3 you God?

4 MR. WELCH: I do.

5 THE COURT: And it's W-E-L-CH?

6 MR. WELCH: Yes, sir. Thank you.

7 THE COURT: Okay. All right. And I have your
8 declaration, Mr. Welch, that's dated January 31, 2019. Now
9 that you're sitting here testifying today, would this
10 constitute your direct testimony?

11 MR. WELCH: Yes, sir, it would.

12 THE COURT: Okay. All right. Is there any
13 objection to the qualification of Mr. Welch as an expert?

14 MR. SERKIN: Not to the qualifications as it were
15 articulated by Ms. Mishkin, no.

16 THE COURT: Okay. All right. So...

17 MR. CHAPMAN: Your Honor, for the record, Dean
18 Chapman of Akin Gump on behalf of the Creditor's Committee.

19 THE COURT: Okay.

20 MR. CHAPMAN: We are locating two documents we
21 intend to hand to the witness and to Your Honor. They are
22 the expert report submitted by Mr. Welch and also the expert
23 report submitted by the committee's expert, Mr. Greenspan.

24 THE COURT: Okay.

25 DIRECT EXAMINATION OF MICHAEL WELCH

1 BY MR. CHAPMAN:

2 Q All right, Mr. Welch, I'd just like to start by asking
3 you about JLL's appraisal work in connection with the Sears
4 bankruptcy. Sears was retained to -- I'm sorry, JLL was
5 retained to appraise certain of Debtor's real estate assets
6 to assist the Debtors in determining the value of those
7 assets in this proceeding, correct?

8 A I'm sorry, Mr. Chapman. When you handed me this
9 document you said we're going to start with yours and you
10 handed me Mr. Greenspan's?

11 Q That's Mr. Greenspan's. No, we are locating yours and
12 as soon as we find it we'll pass that out as well.

13 A I'm sorry, can you restate your question?

14 Q To the question, yes, sir. So, JLL was retained to --

15 THE COURT: The Debtor's counsel is going to give
16 him a copy of his declaration.

17 MR. CHAPMAN: Thank you.

18 MR. WELCH: Thank you.

19 Q JLL was retained to appraise certain of the Debtor's
20 real estate assets to assist the Debtors in determining the
21 value of those assets in this proceeding, correct?

22 A That is correct.

23 Q And JLL has performed two sets of appraisals on behalf
24 of the Debtors, correct?

25 A Yes.

1 Q The first, which you refer to in your report as the
2 Phase 1 appraisals are for 21 properties of the Debtor's
3 properties, correct?

4 A I believe it was 24. It was the Phase 1 properties,
5 that's correct.

6 Q That's right. And then for Phase 2 properties there
7 were approximately 400 different properties that JLL
8 appraised, correct?

9 A Approximately, that's correct.

10 Q And there are additional real estate assets in the
11 Debtor's portfolio that JLL did not appraise, correct?

12 A There are.

13 Q JLL appraised a subset of the overall Debtor's real
14 estate assets, correct?

15 A We did.

16 Q Turn to Page 22 of the committee's expert, Mr.
17 Greenspan's report, which is the document I originally
18 handed to you. You'll see Exhibit 10 on this page.

19 A I do.

20 Q Can you see in the -- there's a shaded bar chart called
21 Excluded by Debtor. Below that it indicates unencumbered
22 and an asset count of 555. Do you see that?

23 A I do.

24 Q And do you see here that Mr. Greenspan's identified 555
25 unencumbered assets to which the Debtors have attributed no

1 value. Is that correct?

2 A That's what the chart says. As I mentioned, I didn't
3 value these properties. I don't know if one of the other
4 groups did or not.

5 Q Well, that's where we're going. JLL never valued these
6 particular properties, correct?

7 A They did not.

8 Q Okay. And to be clear, you're not offering any formal
9 opinion on the value of these properties today, correct?

10 A I don't intend to.

11 Q You have your report in front of you, is that correct?

12 A I do.

13 MR. CHAPMAN: And, Your Honor, let me hand you a
14 copy of --

15 THE COURT: No, I have it.

16 MR. CHAPMAN: Oh, you do? Wonderful.

17 Q Okay. Can you turn to Page 15 of the report? And I'm
18 focused on Page 15, Section D entitled, The Debtor's
19 Marketing and Sales Process Appears Reasonable. Do you see
20 that?

21 A Yes, I'm with you.

22 Q In this section you express an opinion that the
23 Debtor's marketing sales process for its real estate assets
24 was, quote, "Consistent with normal business practices for
25 the time requirements allotted," correct?

1 A Yeah, that's what I believe.

2 Q Your expertise is in real estate valuation, correct?

3 A It's certainly my primary area of expertise, certainly.

4 Q And you don't really get involved in the sale of
5 properties, is that right?

6 A Well, in our valuation process, the sale of property is
7 often the ultimate goal. So understanding of the process is
8 certainly critical as inherent in the definition of market
9 value, its exposure and marketing, willing buyer, willing
10 seller. So we have to have expertise in the process as well
11 even though we're not conducting the process ourselves.

12 Q Is the sales process something that you're involved in
13 on a day to day basis?

14 A Well, from a valuation standpoint I am, because we are
15 justifying a sales price, we're helping set a sales price,
16 or providing individuals with a bases for whether or not
17 they should conduct a transaction.

18 MR. CHAPMAN: I'm going to hand you a copy of your
19 deposition transcript, with your Honor's permission.

20 THE COURT: Sure.

21 Q Turn with me to page 15 of your deposition transcript.
22 Look at Line 7. Are you there?

23 A Yes, sir.

24 Q And the question was "Do you have any expertise in the
25 marketing sales process of real estate?" And Ms. Mishkin

1 objected to form. And you said, "Well, I work for the
2 second largest real estate firm in the world and I know
3 those folks. I know the reputation of their ability. We
4 refer things back and forth. So I'm aware of their
5 expertise, but I don't really get involved in the sale of
6 properties." Do you see that?

7 A That's consistent.

8 Q Do you see that and you believe that's true and
9 accurate, correct?

10 A I do.

11 Q And it continues: "Do you consider yourself an expert
12 in the sale of real estate?" And you say, "I would say I
13 have more than a layman's understanding of the processes
14 that are involved but it's not what I do on a day to day
15 basis," correct?

16 A That's correct.

17 Q So, that's correct. The sale of real estate is not
18 something you do on a day to day basis, right?

19 A That is correct.

20 Q And you only became aware of the Debtor's marketing and
21 sale process in connection with responding to Mr.
22 Greenspan's expert report, correct?

23 A That's true.

24 Q You weren't actually involved in the Debtor's marketing
25 and sale process, right?

1 A By design I was not.

2 Q And you don't have any knowledge of the information,
3 for example, uploaded to the data rooms for prospective
4 purchasers to review, correct?

5 A Generally.

6 Q Generally you don't have any knowledge of it?

7 A Generally I have a limited understanding of what was
8 uploaded.

9 Q Can you turn to Page 199 in your deposition transcript?
10 I'm looking at Line 3. Are you there? I asked you, "Do you
11 have a view as to the sufficiency of the information placed
12 in the data rooms for prospective purchasers to review?"
13 Answer: "I have no knowledge of it."

14 A That's correct.

15 Q And how would you reconcile your answer that said you
16 had no information -- no knowledge of the sufficiency of the
17 information placed in the data rooms for prospective
18 purchasers last week and what you just told me about having
19 a general understanding?

20 A Well, the types of information would be property
21 specific. I'm certain there were leases -- property
22 specific information like surveys and things like that. I
23 did not view the data room so I can't comment on the
24 sufficiency of it, but the types of information that are
25 generally located there I would certainly be aware of.

1 Q And you're aware of that type of information because of
2 the conversation you had with your colleague Mr. Jaggy at
3 JLL?

4 A That's correct.

5 Q And anything else?

6 A Well, you asked me additional questions regarding
7 another declaration which we discussed, where you noted some
8 items that you believed were to be deficient. So we did
9 have an additional discussion there about it.

10 Q Okay, that's fine. Now, you don't know what JLL's
11 overall marketing strategy was in connection with the sale
12 process, correct?

13 A I do not.

14 Q And you're not actually testifying as an expert on the
15 real estate process run by Sears, right?

16 A I've expressed opinions as to what I believe to be the
17 reasonableness of the process after discussions with the
18 gentleman in charge of it. If those are considered to be
19 expert opinions, then so be it. But I've expressed my
20 opinions through the declaration and I stand by them.

21 Q Now, you're aware that the sales process resulted in
22 the Debtor's receiving nonbinding indications of interest
23 for some of their real estate assets, correct?

24 A I am.

25 Q You said you are?

1 A I said I am.

2 Q Thank you. But you agree that in a bankruptcy scenario
3 these indications of interest are not a reliable indication
4 of the valuation of the properties, correct?

5 A I think they're indications of interest in real estate.
6 The value or the price would be determined after a
7 negotiation.

8 Q And so as a result, the indications of interest aren't
9 a basis of evaluation of the properties, correct?

10 A I don't think they're certainly a data point you have
11 to consider. It certainly lets you know that an asset has
12 interest as opposed to some properties with no interest
13 where we may not be able to have a transaction prior to a
14 specified date. So it is a data point that gives
15 consideration to value but it's not an indication of price.

16 Q And I believe you told me when you were deposed last
17 week that it's not uncommon, in your words, in a bankruptcy
18 situation to see bottom-fishers coming in to make lowball
19 offers, knowing that the seller is in financial distress,
20 correct?

21 A I think that's to be expected.

22 Q Let's talk for a moment about the Phase 2 appraisals
23 that JLL did and those were the approximately 400 properties
24 that were appraised, correct?

25 A That's correct.

1 Q For those properties JLL first calculated a market
2 value and then applied a liquidation discount, correct?

3 A That is correct.

4 Q And those liquidation discounts were assumed a sales
5 period concluding by May 13, 2019, is that right?

6 A Yes, sir.

7 Q And that was the date you understood the leases would
8 have to be assumed or rejected, correct?

9 A That was my understanding.

10 Q And in light of the fact that the wind-down period
11 would begin in mid-January, that meant an approximately
12 four-month sales process, correct?

13 A Yes, sir.

14 Q You also considered a four-month sales process or
15 period for owned assets as well as leased assets, right?

16 A I did.

17 Q And it was important for you to understand the
18 timelines of the sales process in order to appropriately
19 measure the impact to value, correct?

20 A It is.

21 Q For example, you could probably get more people at the
22 table in four months than you could in 30 days, all else
23 equal, right?

24 A Yes, sir.

25 Q And you could probably get more people at the table in

1 12 months rather than four months, all else equal, correct?

2 A I believe you could.

3 Q And as a result of the liquidation discount you would
4 apply over a 12-month period, it would be less than the
5 discount you would apply over a four-month period, all else
6 equal, correct?

7 A To a certain extent. Once you deal with the volume of
8 properties, it'll be placed on the market here for the type
9 of asset we have -- there's going to be a point of
10 diminishing returns, because these stores are so large and
11 there are so many of them, at some point no one else is
12 coming to the table. But your general premise that a longer
13 time period will allow for more exposure is certainly true.

14 Q Thank you. Can you turn to Paragraph 26 of your expert
15 report? This is located on Page 10 of the document. And in
16 this paragraph you discuss the possibility of an additional
17 bulk sale discount -- oh, tell me when you get there.

18 A I'm there now.

19 Q 26. In this paragraph you discuss the possibility of
20 an additional bulk sale discount over and above the
21 liquidation discount you applied to the Phase 2 appraisals,
22 correct?

23 A I do.

24 Q I want to draw your attention to what's the fourth
25 sentence of this paragraph, begins, "If all..." Do you see

1 where that is?

2 A Yes, sir.

3 Q It says, "If all or a substantial portion of the
4 Debtor's properties were simultaneously liquidated, a higher
5 discount would need to be applied to account for the lower
6 sales price that would result if the market was flooded with
7 hundreds of assets that cannot be quickly absorbed as only a
8 finite amount of purchasers even have uses for such spaces."

9 Do you see that?

10 A I do.

11 Q In this sentence you refer to market in the singular,
12 correct?

13 A Meaning, the global market for this type of asset.

14 Q And you agree that Sears properties, the Sears
15 properties you valued are located in more than 200 different
16 markets, correct?

17 A They're located in a single market of big box stores of
18 approximately 100,000 square feet, of which there is a
19 limited pool of purchasers. Those assets in a single asset
20 class or asset market are located across the United States
21 in multiple markets.

22 Q In fact, more than 200 separate markets, correct?

23 A Yes, sir.

24 Q And as a result, those markets wouldn't necessarily be
25 affected by the fact the properties were hitting the market

1 at once, because an individual market might only have one
2 property in it, right?

3 A If I understand your correction -- your question
4 properly, if you're in a market where there is demand and
5 you only had one asset, then a transaction is likely to
6 occur. When we're dealing with 1,000 assets or 500 assets
7 across multiple markets for an asset class that's
8 distressed, then it becomes less probable. This is intended
9 to reflect what would occur to the net proceeds if you
10 liquidated all these properties at one time.

11 Q I want to confirm -- can you turn your deposition to
12 Page 75?

13 A I'm there, Mr. Chapman.

14 Q And look at -- Line Number 9. I asked you "So, many
15 markets wouldn't necessarily be affected by the fact that
16 the properties were hitting the market at once because an
17 individual market might only have one property, is that
18 correct?" Answer: "Correct. That is correct." Did I ask
19 you that question and did you give me that answer?

20 A From where you started reading, your read it correctly.

21 Q Okay. The paragraph we were just looking at, Paragraph
22 26, can you go down to the last sentence of that paragraph?
23 It begins "And even if..."

24 A Yes, sir.

25 Q It says, "And even if some of the properties were

1 absorbed, they would be sold for a lower price than if they
2 were individually released to the market because buyers are
3 unwilling to pay premium prices when they know that the
4 seller is in a distressed or precarious position."

5 Do you see that?

6 A I do.

7 Q And we discussed in your deposition this is because, in
8 your view, the seller is distressed or precarious financial
9 situation, provides the prospective buyer with a negotiating
10 advantage.

11 A I believe it does.

12 Q Okay. Now you're worried on this bankruptcy that the
13 Debtors conducted a sale of 13 U-Haul properties; is that
14 right?

15 A I am.

16 Q And you have -- but you haven't reviewed any
17 documentation relating to that sale, correct?

18 A I have not.

19 Q And you haven't seen any appraisals of the property
20 subject to that sale, correct?

21 A No, sir. I have not.

22 Q And you haven't seeing anything about what the sales
23 price of those properties, correct?

24 A I have not.

25 Q And you don't know how the sales price compares to the

1 appraisals of those proprieties, correct?

2 A I do not.

3 Q There's a brief discussion of Toys 'R Us in your
4 declaration, correct?

5 A There is.

6 Q Let's turn to that, Paragraph 30. And I'm going to
7 begin reading the third-to-last line on Paragraph 30 where
8 it says "Mr. Greenspan also appears to." Are you with me?

9 A I'm sorry, page and line again, please?

10 Q Yeah. Page 12, Paragraph 30, the sentence being "Mr.
11 Greenspan also appears to omit."

12 A Yes, sir. I'm there with you.

13 Q "Mr. Greenspan also appears to omit from his report any
14 credible absorption analysis explaining how hundreds of
15 properties could be sold in 18 months. For example, it is
16 my understanding that in the Toys 'R Us liquidation, only
17 approximately 35 percent of the leases sold, and for
18 approximately 44 percent of their appraised dark value."
19 Your source for the information contained in this sentence
20 was Mr. Emilio Amendola at A&G Realty, correct?

21 A That's correct.

22 Q And he's the one who told you that the lease property
23 sold for 44 percent of their appraised dark value.

24 A That's correct.

25 Q You personally don't know anything about the appraisals

1 of the Toys 'R Us stores referenced in this sentence, right?

2 A Heard a lot of from Mr. Amendola.

3 Q Only through Mr. Amendola is how you have understanding
4 of these appraisals, correct?

5 A That's correct.

6 Q So you haven't seen the appraisals.

7 A I have not.

8 Q You don't know who actually formed them, do you?

9 A I do not.

10 Q You don't know what methodologies were used in these
11 appraisals, correct?

12 A That's correct.

13 Q You don't even know if they were accurate, correct?

14 A Well, I haven't seen them. I can't opine to that.

15 Q You're not familiar with the Toys 'R Us bankruptcy
16 process generally, right?

17 A That's correct.

18 Q And you don't have any understanding as to the
19 circumstances under which Toys 'R Us stores were sold in
20 that bankruptcy process, correct?

21 A That's correct.

22 MR. CHAPMAN: Nothing further.

23 THE COURT: Okay. Any redirect?

24 MS. MISHKIN: Redirect, Your Honor.

25 REDIRECT EXAMINATION OF MICHAEL WELCH

1 BY MS. MISHKIN:

2 Q Mr. Welch, was there a division at JLL between the team
3 conducting the valuation of real estate properties and the
4 team conducting the marketing and sale process?

5 A Yes, ma'am, there was, by design.

6 Q And what was that design?

7 A Well, it's important valuers in the United States to be
8 impartial. We don't have a set objective when we determine
9 market value of real estate. And so obviously folks
10 involved in the sale of real estate have a vested interest
11 in the transaction and the corresponding commission. So our
12 charge was to determine the market value of these
13 properties, irrespective of who was selling them, and turn
14 that information over to M-III so they could then use that
15 information to determine the proceeds through a process that
16 JLL was performing.

17 Q Mr. Welch, what, if anything, did you do to learn about
18 the specific sales and marketing procedures for real estate
19 assets the Debtors conducted in this case?

20 A Well, when I learned that it was at issue, I contacted
21 Naveen Jaggi the president of our retail brokerage group and
22 asked him about the process and his ability to generate
23 interest.

24 Q Mr. Welch, you testified that JLL assigned certain
25 unencumbered real estate assets that you appraised as having

1 zero value. Why would certain of those assets be appraised
2 at a zero?

3 A So many cases, Ms. Mishkin, were appraising Sears'
4 position where they hold a lease. If -- for example, Sears
5 currently has a lease where they paid \$4 a square foot in
6 rent and the market is \$5 per square foot in rent. The
7 delta or the arbitrage in that rent is not large enough to
8 get a sub-tenant and then create net proceeds. There are
9 numerous leases that fall into that category where the delta
10 between the rent was so small that it wouldn't create value.

11 Additionally, there were numerous leases where
12 Sears -- the remaining lease terms were 10 years or less.
13 And it's less likely you'll get someone to undertake the
14 capital investment necessary or the risk to assume a lease
15 with a shorter time frame without having options to go to
16 stay longer. So there were assets in the Sears portfolio
17 that we didn't just ascribe zero value to. The data
18 involved around those lent a value -- or supported a value
19 estimate of zero.

20 Q And to your understanding, Mr. Welch, did the
21 committee's advisors, FTI, and Mr. Greenspan generally agree
22 with that approach?

23 A They both omitted several hundred properties from their
24 valuation on that very same basis.

25 Q So those 550 excluded assets that Mr. Chapman pointed

1 out before, it is your understanding that Mr. Greenspan also
2 excluded several hundred of those from his analysis?

3 A I believe it was somewhere near 400, and I believe they
4 were both correct to do so. I think their methodology was
5 sound, and their reasoning was appropriate. I think the
6 presentation was a little misleading, but I think what they
7 did was appropriate.

8 Q Mr. Welch, with respect to the 13 U-Haul properties
9 that Mr. Chapman asked you about, do you have an
10 understanding as to whether the contract of sale for those
11 was negotiated pre-petition?

12 A I don't know that, but for it to close in that short
13 time frame, it would appear that there was some discussion
14 that would've occurred. The information that folks have
15 talked about being lacking, like environmental reports and
16 service, and things like that take time. It would be
17 unlikely that in a 10- or 12-day period all that could've
18 been accomplished, but I'm unaware of the specific dates.

19 MS. MISHKIN: Thank you, Mr. Welch. I have no
20 further questions at this time.

21 THE COURT: Okay. Any --

22 MR. CHAPMAN: Nothing further, Your Honor.

23 THE COURT: Okay. You can sit down.

24 MR. WELCH: Thank you, Your Honor.

25 MR. CLAYTON: Your Honor, Lew Clayton from Paul,

1 Weiss for the restructuring subcommittee. We call Alan Carr,
2 and I've handed Mr. Carr a copy of his declaration.

3 THE COURT: Okay. Would you raise your right
4 hand? Do you swear or affirm to tell the truth, the whole
5 truth, and nothing but the truth, so help you God?

6 MR. CARR: I do.

7 THE COURT: And on this -- I'm looking for your
8 declaration here. Okay. And its C-A-R-R, correct?

9 MR. CARR: Yes, Your Honor.

10 THE COURT: Okay. So, Mr. Carr, I have your
11 declaration, which is at Tab 45 in my binder. It's dated
12 February 1, 2019. Sitting here today, would this constitute
13 your direct testimony?

14 MR. CARR: Yes, it would, Your Honor.

15 THE COURT: Okay. All right. Do you want to go
16 ahead with cross?

17 MR. QURESHI: Good morning, Your Honor. For the
18 record, Abid Qureshi, Akin Gump, on behalf of the Committee.
19 May approach the witness binders?

20 THE COURT: Sure.

21 MR. QURESHI: May I proceed, Your Honor?

22 THE COURT: Yes.

23 CROSS EXAMINATION OF ALAN CARR

24 BY MR. QURESHI:

25 Q Mr. Carr, good morning.

1 A Good morning.

2 Q Sir, you were appointed to serve as an independent
3 director at Sears on about October the 3rd, about two weeks
4 or so before the petition date, correct?

5 A That's correct.

6 Q And you served both as a member of the restructuring
7 committee of the board and also the subcommittee of the
8 restructuring committee, correct?

9 A That's correct.

10 Q And that's the subcommittee that, among other things,
11 is charged with investigating claims that the Sears estates
12 may have against Mr. Lampert and against ESL, correct?

13 A That's correct.

14 Q And you were first approached by Mr. Schrock from Weil,
15 Gotshal in late September of 2018 about your interest in
16 serving as an independent director, correct?

17 A Correct.

18 Q And after you got a call from Mr. Schrock but before
19 you were appointed to the board of Sears, you were
20 interviewed by Mr. Lampert, correct?

21 A I had a conversation. I wouldn't call it an interview,
22 but I had a conversation.

23 Q Okay. All right. We don't have to call it an
24 interview. But in that conversation, Mr. Lampert wanted to
25 understand your background, right? He asked you about your

1 background.

2 A Yes.

3 Q And he also asked you about your qualifications,
4 correct?

5 A Yes.

6 Q Okay. And Mr. Lampert also used the opportunity during
7 that telephone conversation to give you his perspective on
8 Sears, correct?

9 A Yes.

10 Q And that happened before you were appointed to the
11 board, right?

12 A Yes.

13 Q Okay. Now, let's talk a little bit about the
14 investigation that has been conducted by the subcommittee
15 that you've addressed in your declaration. Now, the -- as
16 you set forth in the declaration, the subcommittee has
17 investigated potential claims that Sears can assert against
18 Mr. Lampert and ESL among other partners, right?

19 A That's correct.

20 Q Okay. And the subcommittee has, in fact, concluded
21 that Sears has valuable claims that can be asserted against
22 both Mr. Lampert and ESL, correct?

23 A Correct.

24 Q And you state in your declaration that those claims
25 include, with respect to the Seritage transaction and the

1 Lands' End transaction, right?

2 A Correct.

3 Q And those transactions in the aggregate involved
4 transfers of approximately \$3.7 billion going from Sears to
5 those two entities, right?

6 A Yeah. I can't remember the exact number. I know it's
7 -- that sounds about right.

8 Q Okay. And in addition, the subcommittee has
9 investigated circumstances concerning a number of loans made
10 by ESL to Sears between 2016 and 2018, right?

11 A That's correct.

12 Q Rough -- roughly \$2 billion. It's in your declaration.

13 A Yeah, that sounds right.

14 Q Okay. And you understand, of course, that as part of
15 granting ESL the right to credit bit in this case, the
16 subcommittee gave up on behalf of the estate the ability of
17 Sears to pursue as a remedy against ESL for its role in
18 those various transfers the disallowance of any of the
19 claims that ESL has against Sears.

20 A Yes, that's right.

21 Q And so am I right, Mr. Carr, that if any of the claims
22 against ESL or against Mr. Lampert, those claims that you
23 describe in your declaration as valuable, actually succeed,
24 the Sears estate to get a remedy has to pursue ESL and Mr.
25 Lampert personally for damages, right?

1 A That's correct.

2 Q Okay. And you understand that ESL has secured claims
3 that it has filed against the Sears Debtors at approximately
4 \$2.4 billion, right?

5 A I'll take that. I'd never seen a proof of claim.

6 Q But you understand it's approximately that order of
7 magnitude.

8 A Yes.

9 Q Okay. And I think you also understand, sir, that in
10 the final ESL bid, the one that your subcommittee accepted
11 on behalf of the estates, ESL has been given the right to
12 credit bid, right?

13 A That's right.

14 Q And you understand that what they are credit bidding is
15 approximately \$1.3 billion of the 2.4 that it has.

16 A Right.

17 Q Okay. So not all of it.

18 A That's right.

19 Q Okay. And as you sit here today -- you didn't know at
20 your deposition, but I take it that since your deposition,
21 you've come to learn that all of the more than \$2.4 billion
22 in claims that ESL has against the Debtors are being deemed
23 allowed claims as part of the credit bid.

24 A That's right, with certain limitations on rights to
25 recovery, but that's right. They're all being allowed.

1 Q Sure. So, in other words, although what ESL is credit
2 bidding here is \$1.3 billion of its claims, what they're --
3 what they're getting is a deemed allowance of all \$2.4
4 billion of their claims, correct?

5 A Correct.

6 Q Okay. Now, let's talk for a minute about the release
7 in one other respect. Now, in your declaration, you don't
8 anywhere make reference to a decision by the subcommittee to
9 grant a release to Cyrus, do you?

10 A I don't believe I do.

11 Q Okay. And are you aware, sir, that on Friday -- this
12 past Friday, February 1st, so one business day before this
13 trial commenced -- the Debtors filed with the Court a
14 revised sale order? Or I should say a proposed sale order?

15 A I'm not that familiar with it, no. Sorry.

16 Q Do you -- did you come to learn that a sale order was
17 filed with the Court that released a for Cyrus?

18 A I did not. Didn't discuss it with my advisors.

19 Q I'm sorry. You did not?

20 A No, I did not.

21 Q So you did not know that a release was provided to
22 Cyrus?

23 A I understand now that a release -- if that's what
24 you're asking, I do understand that a release was provided
25 to Cyrus.

1 Q Okay.

2 A I don't know that the order was -- I mean, being a
3 little technical, I don't know what was filed on Friday.

4 Q Okay. Well, did the restructuring committee approve,
5 as far as you are aware, the granting of a release to Cyrus?

6 A I believe it was part of the overall deal when we
7 approved the term sheet in the -- around January 16th.

8 Q So your testimony is that prior to the restructuring
9 committee accepting this deal, there was an understanding
10 that Cyrus was getting a release?

11 A I believe that's right.

12 Q Well, do you know, sir, if in the asset purchase
13 agreement that was originally filed with the Court, the one
14 that was agreed to after the auction, there is any mention
15 of a release to Cyrus?

16 A I don't know. I don't know whether there is or there
17 isn't.

18 Q Okay. You're not aware of there being one, right?

19 A I'm not -- I'm not aware either way.

20 Q Okay. and Mr. Carr, did you ask your advisors to
21 undertake any analysis of any potential claims that might
22 exist against Cyrus?

23 A My --

24 Q I should add -- I'm sorry to intort -- prior to when
25 you believe Cyrus was granted a release. So before then --

1 A I understand.

2 Q -- did you instruct your advisors --

3 A I understand your question. I understand your
4 question.

5 Q Okay.

6 MR. CLAYTON: Your Honor, I would just object to the
7 extent that those advisors include lawyers, and I don't
8 think he should invade --

9 THE COURT: Well, he's just -- did you -- did he
10 discuss as opposed to what did he say?

11 MR. QUIRES: Did it happen?

12 THE COURT: Right.

13 MR. CARR: My recollection is well before the
14 auction, we reviewed a variety of claims and looked at all
15 the debt claims. And I believe that would've included any
16 parties who received securities, and I know Cyrus was
17 involved in some of those financings.

18 Q Okay. Well, were you aware prior to the alleged date
19 on which a release was granted to Cyrus that the committee
20 had filed a Rule 2004 motion as against a number of parties,
21 including Cyrus, relating to the auction for the MTN notes?

22 A I know -- I know you have. I don't recall what the
23 date was.

24 Q Okay. And do you know, sir, whether in connection with
25 agreeing to a release for Cyrus you instructed your advisors

1 to conduct an investigation with respect to Cyrus's actions
2 in the MTN auction?

3 A I did not.

4 Q You did not do that?

5 A No.

6 Q Okay. Has it ever been reported to you that there was
7 any investigation conducted by the Debtors into Cyrus's
8 conduct with respect to the MTN auction?

9 A It was not.

10 Q Okay. Now, are you aware -- let me back up. I'm going
11 to make a representation to you because we don't have a lot
12 of time, and your counsel, I'm sure, will point it out if
13 I'm wrong that in the initial form of asset purchase
14 agreement that was filed with this Court, there is no
15 mention of a release to Cyrus. Okay.

16 Now, my question to you, Mr. Carr, is are you
17 aware of the Debtors receiving any consideration that was
18 not already provided for in the asset purchase agreement
19 that was filed with this Court on account of granting a
20 release to Cyrus?

21 A Could you ask it again? I want to make sure I answer
22 this properly.

23 Q Sure. I made the representation to you that the asset
24 purchase --

25 A Yeah, I got the representation.

1 Q -- does not have a release for Cyrus.

2 A Yep.

3 Q Okay. So what I'm now asking is subsequent to that
4 asset purchase agreement being filed with this Court, so
5 after the action was closed, are you aware of Cyrus
6 providing any consideration to the Debtors in return for
7 which Cyrus received the release that is contained in the
8 proposed sale order? Do you understand the question?

9 A I do understand the question.

10 Q Great.

11 A So I'm going to saner it in a more complete way, if I
12 can, to make clear what my understanding was.

13 Q Well -- okay. Go ahead.

14 A Because I had understood that Cyrus, as a condition to
15 their part in the bid, were demanding a release for them,
16 and I have a recollection of that discussion during the
17 auction process. So they were putting consideration and
18 including rolling I think \$250 million junior DIP as part of
19 that there, but if you're asking me between the time and
20 then, nothing additional came obviously in the deal. The
21 deal was not sweetened between January 17th and this
22 weekend.

23 Q Okay. So let me make sure I've got this right. So
24 your testimony is that Cyrus demanded a release in return
25 for its participation in this bid, right? Do I have that

1 part right?

2 A That's my best recollection, yes.

3 Q Okay. And yet, that release is not in the asset
4 purchase agreement that was filed with the Court. So is it
5 your testimony that there was an understanding with Cyrus,
6 and between Cyrus and the company that that release wouldn't
7 be in the asset purchase agreement, but subsequent to filing
8 the asset purchase agreement with the Court, that release
9 would end up in a proposed sale order?

10 A What I'm saying is I have a recollection that it was a
11 term of the deal that there would be a release for Cyrus as
12 part of the negotiation. I don't know where things went in
13 legal documents and things of that sort, so I don't know the
14 mechanics of how they got to where they did.

15 Q Okay. So you don't know how it came to be that the
16 relies that you think Cyrus demanded didn't end up in the
17 asset purchase agreement, and you're not aware of Cyrus
18 getting any -- providing, rather, any consideration to the
19 estate after the asset purchase agreement was filed,
20 correct?

21 A That's correct.

22 Q Okay. Let's switch topics again, Mr. Carr, and talk
23 about the bid. Now, am I correct that ESL in the bid that
24 you, on behalf of the restructuring committee, accepted did
25 not allocate the amounts being paid for each of the assets

1 that it is acquiring.

2 A That's correct.

3 Q Okay. And as a consequence of ESL not doing that
4 allocation, am I right, sir, that you're unable to tell this
5 Court whether the credit bid of ESL is being used to acquire
6 encumbered or unencumbered assets?

7 A That's correct.

8 Q And you understood, I take it, at the time that you
9 approved the bid, that the bid procedures order did require
10 allocation?

11 A I did.

12 Q Okay. Now, let's turn, if we could, Mr. Carr, to your
13 decision again to accept the ESL bid as the final bid. Now,
14 one of your roles, obviously, on that evening was to assess
15 whether the ESL going-concern bid was the highest and best,
16 correct?

17 A I think the highest or best.

18 Q Right. And in the context of assessing what the
19 highest or best bid was at the auction -- you don't
20 understand what the concept of good faith means, right? Do
21 you recall that exchange at your deposition?

22 A I do understand it in the -- in the context of -- that
23 it was presented, it was not clear and was very confusing in
24 my deposition.

25 Q Right. And what you said -- and we can refresh your

1 recollection with your deposition testimony if you like --
2 is that if somebody's money is green, it's green.

3 A Right.

4 Q Okay. Your focus was as long as the bidder, here ESL,
5 is creditworthy, and as long as you're comfortable with the
6 execution risk, good enough for you, right?

7 A I don't -- if you want to get my transcript, we can go
8 through it. I believe I was speaking in generalities around
9 how I think about the good faith of bidders in processes --

10 Q Well, I'm asking --

11 A -- I've been involved in many, many times. So --

12 Q I'm asking you right now.

13 A Yeah.

14 Q Forget about what happened at your deposition. I think
15 that's clear that your focus was if ESL was creditworthy and
16 if you were comfortable in the execution risk for the
17 Debtors of transacting with ESL, that was good enough for
18 you.

19 A There were other factors, but that would be
20 satisfactory, yes.

21 Q Okay. Now, at the auction -- and to be clear, I'm now
22 talking about the auction commenced on the 14th at Weil,
23 Gotshal's offices and ended in the early hours of the 16th,
24 I believe.

25 A I think the 17th, actually.

1 Q 17th. You're right. You did not at any time during
2 that process meet with the creditor's committee in advance
3 of accepting the ESL bid, right?

4 A There was no formal meeting. I saw advisors in the
5 hall and things of that sort.

6 Q And I'm not talking about passing Mr. Dizengoff in the
7 hallway. I'm talking about you didn't have a meeting during
8 the course of that auction with Creditors' --

9 A I did not. No.

10 Q Okay. And you have no knowledge of your advisors
11 meeting with the creditor's committee at the auction in
12 advance of accepting the ESL bid, right?

13 A That's right.

14 Q Okay. And were you present at the auction when Mr.
15 Dizengoff, lead counsel for the committee, made a statement
16 on the auction record that the committee had not been
17 consulted with throughout the auction?

18 A I forget exactly, but I remember that in the early
19 morning of the 16th, after Mr. Schrock made the announcement
20 of the determination of the -- of the restructuring and
21 subcommittee. Yes.

22 Q Right. And you have no basis to disagree with what Mr.
23 Dizengoff said on the transcript, do you?

24 A No.

25 Q And you personally, Mr. Carr, did not think it was

1 important to consult with the UCC because you believed that
2 you already had the opinion of the committee before the
3 auction.

4 A I was well aware of their opinion, yes.

5 Q Now, am I right that as you sit here today, there are
6 still aspects of the asset purchase agreement that are being
7 negotiated?

8 A I believe there are some, yes.

9 Q Okay. Including the terms of the release?

10 A I'm not sure where exactly that stands. I got an
11 update this morning that there was a draft floating around.
12 I don't know whether it's done or not.

13 Q Well, do you understand ESL and the company to be in
14 ongoing negotiations concerning the terms of the release?

15 A As I understand it -- as I understand that the --
16 there's discussion on the precise wording of it and I think
17 to address some other concerns the UCC raised at the
18 beginning of the hearing on Monday to clarify what it said.
19 But my understanding also was that at this point, the
20 substance -- the material substance of the release has not
21 changed.

22 Q Mr. Carr, you should have in front of you in the very
23 front of your binder your declaration.

24 A Mh hmm.

25 Q And if you could please, turn to Paraph 26.

1 A 26?

2 Q Yes.

3 THE COURT: I'm sorry. Someone is on a call. The phone is
4 not on mute. You need to put it on mute.

5 Q Now --

6 A Okay.

7 Q Mr. Carr, you'll see that in Paragraph 26, you refer to
8 the APA, and you say it does not include a global release,
9 and you go on from there. I want to focus your attention to
10 the last sentence before the enumerated A, B, C, D, E. Do
11 you see that?

12 A Yes.

13 Q And what you write -- and tell me if this is consistent
14 with your understanding -- "The limited release expressly
15 excludes all other claims and causes of action, including,"
16 and then there's a list of A, B, C, and I want to focus you
17 on D, which says, "All claims related to the Lands' End or
18 Seritage transactions."

19 A I see that.

20 Q Is that consistent with your understanding of what the
21 scope of the release was that you agreed to the night of the
22 auction?

23 A Yes.

24 MR. QURESHI: Okay. Now, I am going to mark for
25 identification as Exhibit 181 an amendment to the asset

1 purchase agreement that the committee received late last
2 night, Your Honor.

3 Q Mr. Carr, take a look, if you would, at this amendment.
4 Tell me if you've seen it before.

5 A I have not seen it before.

6 Q Okay. Now, I will direct you, please, to Page 23 of
7 the document. And actually, let me ask you before you take
8 a look at that paragraph, Mr. Carr, did you become aware at
9 any point that the scope of the release as it relates to
10 Seritage and Lands' End in particular was being altered from
11 what you agreed to the night of the auction?

12 A No.

13 Q Okay. And did you become aware at any point that the
14 company's advisors were going to propose to ESL a release
15 that, with respect to Lands' End and Seritage had a
16 different scope than what you agreed to at the auction?

17 A I can't recall any notice of that.

18 Q Okay. And just so we're clear, Mr. Carr, I don't mean
19 to suggest that this amendment that I've had -- handed you
20 has been agreed to. I will represent to you that my
21 understanding is that this is a proposed amendment that went
22 from the Debtors to ESL. To my knowledge, it has not been
23 agreed to, but again, I'm not here testifying, and I don't
24 know --

25 MR. CLAYTON: Your Honor, if I may object. There

1 was a lot of discussion about this release yesterday in open
2 court. I don't think there's a disbarment as to what the
3 language is supposed to do. The parties, as everyone in
4 this courtroom knows, have been -- and part of the request
5 of the UCC clarified this release. This is a
6 20-something-page document. You cannot from this document
7 determine a loan from the document exactly what it means
8 because it has inserts into another document. It's not
9 agreed to, as Mr. Qureshi says. I don't understand why
10 we're getting anywhere asking Mr. Carr about his
11 understanding of this -- of this document. And I will say
12 that if it turns out that we proffer to the Court a document
13 that does not reflect what everybody knows the intent of
14 this document is, it will not be accepted by the Court. And
15 if we made a drafting error, we will correct it. So I
16 respectfully suggest this is not an appropriate line of
17 inquiry, except if it's simply to make a rhetorical point
18 that has no meaning in this proceeding.

19 MR. QURESHI: Well, Your Honor, Mr. Carr
20 represents the decision maker here. I think it's entirely
21 fair to inquire of Mr. Carr what he, as the decision maker,
22 understands the scope of the release to be.

23 THE COURT: Well, I actually -- we went through
24 this yesterday, and I'm the decision maker, and I made it
25 clear what the release should say. So this is a waste of

1 time. I mean, the point that we are dealing a document that
2 needs to be changed has been made. And I made the point
3 yesterday, I think quite clearly, that it needs to be
4 changed and how it needs to be changed. So that's enough on
5 this topic.

6 MR. QURESHI: Okay. And just -- if I may make one
7 comment for the record, Your Honor. What I had intended to
8 do with this document is to make the point that it now
9 releases certain --

10 THE COURT: It is not a binding document. And I
11 don't care what it says. I care what I said yesterday,
12 which was largely what you said yesterday, or your
13 colleague. So I wouldn't turn victory into something less
14 than that, if I were you --

15 MR. QURESHI: I am --

16 THE COURT: -- on this point.

17 MR. QURESHI: I am happy to move on, Your Honor.

18 THE COURT: Okay.

19 Q All right. Mr. Carr, let's talk for a minute about
20 administrative solvency. Now, from time to time, sir, you
21 communicated with various advisors of yours and of companies
22 by text message, right?

23 A Yes.

24 Q And I want to show you just a handful of those. And
25 the first appears at Tab 6 of the binder that I have put in

1 front of you.

2 A Tab 6?

3 Q Yes.

4 A Yep.

5 Q And it's been marked as JX-171.

6 THE COURT: I'm sorry, JX-171?

7 MR. QURESHI: 171. It's at Tab 6 of the binder,
8 Your Honor.

9 THE COURT: Right.

10 Q And you will see, Mr. Carr, that this is an exchange
11 that includes you and Dan Aronson. Now, Mr. Aronson you
12 recognize to be your investment banker from Evercore,
13 correct?

14 A Yes, for the special committee.

15 Q Yes. And this series of text messages that I have put
16 before you, you'll see the date of those is January the 4th.
17 And if you'd like, if it refreshes your recollection, Mr.
18 Carr, there was also a meeting of the restructuring
19 committee on January the 4th. And if you look behind Tab 7
20 of the binder, you will see the minutes from that meeting,
21 and you will see on those minutes first that you were in
22 attendance and secondly that there was a discussion, and it
23 appears on Page 2 of the minutes, of the administrative
24 claims and shortfalls. So do you have that context?

25 A Yes.

1 Q Okay. Let's go back to the text message.

2 A Yeah. I mean, if you're asking me before we start that
3 these texts were either contemporaneous or not, there's been
4 a confusion with all these texts, just to be clear. The
5 timestamp on them is -- I don't know if you figured -- I
6 haven't figured out exactly when they are.

7 Q The -- I can represent to you that the timestamp is not
8 accurate.

9 A Yeah.

10 Q It's a function of how these were produced.

11 A Yeah.

12 Q So I understand the confusion.

13 A Yeah.

14 Q Now, let's look at the texts. And the first text from
15 Mr. Aronson to you, he says this is a scary conversation
16 now. Do you see that?

17 A Yes.

18 THE COURT: So, I'm sorry. What is the date of
19 these texts? Do we --

20 MR. CARR: This is January 4th.

21 THE COURT: Okay.

22 MR. QURESHI: This is January the 4th.

23 THE COURT: Okay.

24 MR. QURESHI: And you respond to Mr. Aronson on
25 the next page, very. Then you write, not a firm number in

1 our hands. And then in the next page of the exhibit, if you
2 look at the production number, it's the page that ends in
3 775. It's a text from Mr. Aronson to you. There's a
4 reference to Mo. Do you understand that to be a reference
5 to Mr. Meghji?

6 A Mr. Meghji, yes.

7 Q Okay. Read, please, if you could, what Mr. Aronson
8 wrote to you in that text on January the 4th.

9 A "You need to tell Mo to give you a number to make sure
10 the company will not be administratively insolvent and have
11 Ray tell other side. Best and final. No more this moving
12 deck chairs."

13 Q Okay. And turn on, if you could, please, to the last
14 page of the exhibit. And there's another text message from
15 Mr. Aronson to you. And just read, if you could, what Mr.
16 Aronson was advising you there.

17 A "Unequivocal answer. Professionals must represent to
18 you that we are administratively solvent. Without it, this
19 is dead. Ray is right."

20 Q Thank you. Mr. Carr, you never did receive, did you,
21 an unequivocal representation from your advisors that the
22 estate would be administratively insolvent if --
23 administratively solvent if they selected the ESL bid,
24 right?

25 A That's correct.

1 Q You can put that exhibit aside. Now, I don't want to
2 get into APA provisions with you, but you understand
3 generally that there is a provision of this deal that has
4 been referred to as the least designation provision?

5 A Yes.

6 Q Do you remember it was discussed at your deposition?

7 A I actually don't recall the discussion.

8 Q Okay. That's fine. But you're familiar generally with
9 that provision, right?

10 A Very generally.

11 Q Okay. And your presumption is that the purpose of that
12 provision is to give the buyer, here ESL, the option to
13 monetize leases if it wants to.

14 A I believe that's right.

15 Q And if they did that, that would be a benefit that
16 would occur to ESL and not to Sears, right?

17 A That's right.

18 Q And that provision of the APA gives ESL 60 days to
19 designate leases that it may wish to monetize, and you're
20 unable to say, sir, right, how it is that the 60-day time
21 period was arrived at as an appropriate period of time?

22 A I don't recall.

23 Q Okay. Let's switch topics again, Mr. Carr, and talk
24 very briefly about ESL's business plan. Now, sometime in
25 January, you and your colleague on the restructuring

1 committee, Mr. Transier, had a call with Mr. Lampert,
2 correct?

3 A No. Not a phone call. It was -- it was a video
4 conference --

5 Q Okay.

6 A -- I think of the entire restructuring committee,
7 including Ms. Reese and Mr. DePodesta as well with Mr.
8 Lampert.

9 Q I see. You don't recall there being a phone call with
10 Mr. Lampert that involved just you and Mr. Transier?

11 A Nope.

12 Q Okay. So whatever this call or video was, do you
13 recall that one of the pursues of the conversation you had
14 with Mr. Lampert was for him to make his pitch to you as to
15 why ESL's bid ought to be accepted?

16 A Yes.

17 Q And during that call, there was also a discussion of
18 ESL's go-forward business plan, right?

19 A Yes.

20 Q And your recollection is that that was a very general
21 call about how Mr. Lampert intended to run the business,
22 right?

23 A Right.

24 Q And at the time of that call, you did not have before
25 you any document that represented the ESL go-forward

1 business plan, right?

2 A That's right. I think Mr. Transier made a request --

3 Q Right.

4 A -- to have it.

5 Q And there hasn't been any occasion where you have had
6 an opportunity to question anybody from ESL about their
7 business plan, right?

8 A I don't know if I had an opportunity, but I didn't have
9 a conversation --

10 Q Okay.

11 A -- after I had the business plan.

12 Q Okay. Now, let's switch gears again, and I want to
13 look at another text message exchange. This time it's at
14 Tab 8 of your binder, and it's JX-170-C.

15 A Yep.

16 Q And just to give you context here again, the date of
17 this exchange is January the 17th.

18 A Yeah.

19 Q And if you look at the next tab -- again, I'm just
20 trying to give you context here.

21 A Yep.

22 Q The next tab contains minutes of a meeting of the
23 restructuring committee --

24 A Yep.

25 Q -- that began on January the 16th at 11:30 p.m. --

1 A Right.

2 Q -- Western time. Do you see that?

3 A Right.

4 Q And you will see in the minutes, Mr. Carr, that there
5 is a discussion about the so-called DIP shortfall, if you
6 look on the second page of the minutes.

7 A Yes.

8 Q Okay. Now -- and again, I'm understanding the
9 difficulty we have with the timestamps.

10 A This one, I'm very familiar with the timestamps.

11 Q Right. Okay. And you understand --

12 A So these texts actually are not related to this board
13 call.

14 Q Okay.

15 A They relate to the one before it.

16 Q Okay.

17 A Maybe an hour or two earlier.

18 Q And do you recall the substance of the meeting an hour
19 or two earlier?

20 A Yeah. It's because this second call was requested by
21 me actually in relation to the text message you see in that
22 exchange.

23 Q Okay. So let's look at the text. Let's look at the
24 third page. Mr. Stogsdill is on this text message. He is
25 your financial advisor from A&M, correct?

1 A That's correct.

2 Q And the other two individuals on here, again, Mr.
3 Aronson your banker and, of course, you.

4 A Yep.

5 Q And Mr. Stogsdill writes, "Nick has been flagging that
6 DIP issue to the company for weeks. It's been the structure
7 for a while now." Do you have an understanding of what
8 that's a reference to?

9 A Yeah. So to give some context for Your Honor as well,
10 the -- probably the morning before, we had chosen the ESL
11 bid as the highest or best bid and announced it at the
12 auction, left the auction open. But we still had to go back
13 and finish some legal documentation. There was a call --
14 there was a series of calls the afternoon of the 16th and
15 the end of the evening the 16th identifying what open points
16 had been negotiated to. And the one that was raised, I
17 believe in the afternoon, was explained that there was
18 language around this DIP shortfall issue.

19 Q Right.

20 A Which ironically, shortfall actually means better than.
21 If we -- if we come in with a DIP delivery less than 850,
22 whether that -- we get a credit or a benefit for that. And
23 it was -- we were advised that ESL was being insistent that
24 that not be that way, that they get the benefit. But if we
25 delivered more than 850 of DIP, that's an unsatisfying

1 condition to closing.

2 So we were concerned we wouldn't understand what
3 the benefit effectively to ESL could be in that scenario.
4 What would be that among of money? So we asked for some
5 analysis of that. On the 10 p.m. call, luckily -- I mean,
6 it was 9:45 that evening, which is when these texts were
7 taking place -- we got on the call and Lazard got in -- was
8 sort of throwing a lot of numbers at us. And I was getting
9 -- I was getting, frankly, quite confused about where the
10 numbers were coming from. This is what the identification
11 of the DIP issue was about. And so I asked that we actually
12 get something in front of us. And that's where the minutes
13 -- just to give you the time line how it worked.

14 Q Okay.

15 A I wanted to see something first we actually could see
16 what that looked like and what would have to happen to
17 create a scenario in the likely -- the likelihood of
18 actually hitting a scenario where we outperformed the 850
19 deliverable DIP and ESL gets a benefit.

20 Q Okay. And you understand that the way that provision
21 ultimately came to be in the final document is that if there
22 is a shortfall -- in other words, if the Debtor does better
23 in minimizing its draws on the DIP -- the benefit occurs to
24 ESL in the form of ESL dollar for dollar assumes fewer
25 liabilities, right?

1 A Right.

2 Q Okay. And that's the provision that was being
3 discussed in this exchange of text messages?

4 A That's right.

5 Q Okay. All right. Now, let's turn, if we could please,
6 to Tab 10 of your binder. This is another series of text
7 message. And again, if you look at the timestamp, I believe
8 -- but you can correct me if I'm wrong, Mr. Carr -- that,
9 again, there was that same meeting of the restructuring
10 committee on the 16th for which I showed you the minutes
11 where, again, the DIP shortfall provision was discussed.
12 And I want to turn your attention -- and these text
13 messages, by the way, it's again you, Mr. Stogsdill, and Mr.
14 Aronson. And I want to turn your attention -- you should
15 look at them all -- they're very short -- to get the
16 context.

17 A Yep. I'm familiar with these.

18 Q I want you to look at -- bear with me for a second --
19 the page -- if you look at the production numbers at the
20 bottom ending in 941.

21 A 941. Yes.

22 Q Okay. Now, there's a text written from Mr. Stogsdill
23 to you and to Mr. Aronson. And he writes -- and I'm going
24 to skip the expletive when I read it.

25 A Mm hmm.

1 Q "We should plant the seed of this -- blank -- up
2 provision with the UCC so they carry the flag.

3 A Yes.

4 Q Do you have an understanding of what provision Mr.
5 Stogsdill was referring to, sir?

6 A I believe he was referring to this issue around the
7 outperformer, the DIP shortfall --

8 Q The DIP shortfall.

9 A Yes, yes.

10 Q Okay. Mr. Carr, just two more text exchanges to go
11 through, and then I will be done.

12 A I'm sorry, the court reporter asked me a question.
13 Could you start again?

14 Q I said I have just two more text exchanges that I'm
15 going to take you through, and then I will be done.

16 A Okay.

17 Q And if you could turn to Tab 11, please? And this
18 series of texts has been marked JX 168. And again for
19 context, I've placed behind Tab 12 minutes of a January 8th
20 meeting of the structuring committee. That's at JX 103,
21 which bears the same date as this series of text messages,
22 which is to say January the 8th of 2019. Does that help you
23 place these text messages in context, sir?

24 A Yes. I assume that the timestamps are right, which
25 they -- it kind of makes sense. They probably were during

1 this restructuring committee meeting.

2 Q And you will see as you flip through these texts that
3 it appears that you and Mr. Stogsdill are both on the phone
4 listening to a court hearing, right? You say on the page
5 ending in 879 --

6 A I don't know if it's --

7 Q -- I don't have a dial-in. On the next page Mr.
8 Stogsdill says \$17.9 million of the \$120 million deposit is
9 non-refundable. Then you write, "Actually got on." Does
10 that refresh your recollection, that you were texting with
11 Mr. Stogsdill during a status conference?

12 A I don't recall being on a status conference. I don't
13 know. It may have been -- I don't recall ever being dialed
14 into a status conference.

15 Q Okay. But you recall that generally speaking -- you
16 don't have to be specific on the date -- that there came a
17 time where at a status conference Mr. Schrock announced that
18 if ESL paid a deposit of \$120 million and if they agreed
19 that 17.9 of that was non-refundable, they could participate
20 in an auction on the 14th?

21 A That's right.

22 Q Okay. And I want you to read if you could -- go to the
23 page ending in 888 of this exhibit. And I want you to read
24 the text message from Mr. Stogsdill to you. And I want you
25 to read please the response from you to him on the next

1 page.

2 A Mr. Stogsdill said, "Judge made it clear he wanted a
3 deal, so wanted more time for us."

4 My text, "This is good and gives us cover."

5 Q Mr. Carr, Tab 13 if you would, please. And behind Tab
6 13 is a text message from Mr. Aronson to you dated January
7 the 10th. Do you see that?

8 A Yes.

9 Q And I want you to turn over the page to the text that
10 you wrote to Mr. Aronson, and I want you to read it, please.

11 A "Think the judge has given us a window to imperfection,
12 close enough for government work."

13 Q Thank you, Mr. Carr. That's all I have.

14 REDIRECT EXAMINATION OF ALAN CARR

15 BY MR. CLAYTON:

16 Q Just a handful of questions, Mr. Carr. You were asked
17 a number of questions about texts on -- we don't know what
18 time of day those texts were sent. We do know the dates.
19 And I believe the dates were January 4, January 8, January
20 10. Do those dates sound correct to you?

21 A I think the 16th, 17th. That would --

22 Q Well, you were just asked some questions about --

23 A Yes.

24 Q -- texts from the 4th, the 8th, and the 10th. Do you
25 recall?

1 A Yes.

2 Q Was the deal that you and the other members of the
3 restructuring committee approved on the 16th, was that the
4 same deal that was under discussion on those dates, January
5 4, January 8, January 10, or did the deal change?

6 A It changed.

7 Q Okay. You were asked some questions about consultation
8 with representatives of the UCC. And if I remember
9 correctly, you said that the restructuring committee was
10 well aware, I think that was your phrase, of the UCC's
11 opinion. Do you remember saying that a couple minutes ago?

12 A Yes.

13 Q To your knowledge was there any point on which -- at
14 which time you were serving on the committee that the UCC or
15 its representatives ever indicated that they would support
16 anything other than a liquidation of Sears?

17 A No.

18 Q Just two or three more questions. You were asked a
19 number of questions about communications with your advisors,
20 the advisors of the restructuring committee or the
21 subcommittee. Do you recall that?

22 A Yes.

23 Q And you were shown some minutes of meetings of the
24 restructuring committee. Do you recall that?

25 A Yes.

1 MR. CLAYTON: Your Honor, if I may approach the
2 witness just to hand him an additional document. This is in
3 evidence I believe. Your Honor, would the Court like a
4 copy?

5 THE COURT: Sure. Yes.

6 MR. CLAYTON: It's a set of the minutes.

7 THE COURT: Thanks.

8 Q And, Mr. Carr, this is Joint Exhibit 149. I think you
9 were not actually shown this set of minutes. But this is --
10 in the interest of time, I will just say to you that if you
11 look on the first page, you will see these are minutes of a
12 meeting held on January 16, 2019. It begins at 1:00 in the
13 morning. Do you recall that meeting?

14 A I do.

15 Q And I think it ended, if you look at the last page, at
16 1:35 A.M. Now, I'm just going to direct your attention very
17 quickly to the last page of this document. It's the third
18 page I think of the minutes. It's the one where the Bates
19 numbers end 3795. If you look three paragraphs up from the
20 bottom, there's a short -- there are three short sentences.
21 "The committee sought confirmation that the recommendation
22 of Weil, M3, Lazard, and management was to pursue the ESL
23 final bid. Mr. Meghji stated that while administrative
24 solvency could not be assured or be agreed, Mr. Riecker
25 stated that he believed the company's liquidity could be

1 managed, and he agreed on behalf of management." Do those
2 sentences accurately state what you recall the advice was
3 that you received at this meeting of the committee at one
4 A.M. on January 16th?

5 A Yes. I mean, it actually didn't say -- I think all
6 three advisors, Weil, M3, and Lazard, recommended --

7 A Yes. Now, I just want to direct you very briefly to
8 another set of minutes. I think if you look at the binder
9 that you have, I think you were questioned about Tab 9. Tab
10 9 is another set of minutes. And again, in the interest of
11 time, this was another meeting of the committee that
12 occurred at 11:30 P.M. on January 16. That's 18, 19 hours
13 or so after your meeting between 1:00 A.M. and 1:35 A.M.
14 And again, I'm just going to direct you to one paragraph on
15 the last page of this document. One, two, three, four
16 paragraphs up. Short paragraph. It says, "Mr. Aebersold
17 confirmed that the presentation demonstrated that there were
18 ways to manage the 'risk', that the company would generate
19 more cash than needed to reduce the senior DIP to a maximum
20 of \$850 million at closing and trigger the 'DIP shortfall'
21 provision. He stated that from Lazard's perspective, ESL's
22 revised bid represented the best alternative for the
23 company. Mr. Meghji agreed." And my last question to you
24 today, Mr. Carr, do those sentences, again, accurately state
25 the advice that the committee got at this meeting at 11 P.M.

1 on January 16th?

2 A Yes.

3 MR. CLAYTON: Your Honor, no further questions. I
4 believe there may be questions from Weil. We represent, as
5 you know, only the restructuring subcommittee. Thank you.

6 THE COURT: Okay. You can have a re-cross after
7 that.

8 MR. GENENDER: Paul Genender from Weil Gotshal,
9 Your Honor.

10 BY MR. GENENDER:

11 Q Mr. Carr, just a couple of questions. The Cyrus
12 release that you were asked about, did that relate solely to
13 the credit bid?

14 A That's my understanding.

15 Q And I believe you testified to this, but was it your
16 understanding that the consideration for that was rolling
17 the junior DIP?

18 A Yeah. And there may have been other -- but that's the
19 one that comes to mind. I know they were a key part to
20 that.

21 Q And is it also your understanding that there was no
22 intent from that release to release any claims related to
23 the creditor committee's 2004 motion or the MTN sale?

24 A It wasn't my intent.

25 Q And is it also your understanding that the Cyrus

1 release was disclosed to the Court in a filing on February
2 1?

3 A I don't know because I dialed in and -- I didn't get to
4 hear the whole hearing, so I don't know.

5 Q That may be an unfair question.

6 MR. GENENDER: For Your Honor I'll represent
7 docket entry 2332, Paragraph 8, which is in Tab 34 in your
8 notebook. Thank you. No further questions.

9 THE COURT: Okay. Any re-cross?

10 MR. QURESHI: Nothing, Your Honor.

11 THE COURT: Okay. You can step down.

12 MR. CARR: Thank you, Your Honor.

13 MR. QURESHI: Your Honor, just on scheduling, if I
14 could suggest -- I think my partner, Mr. Serkin, will be
15 handling Mr. Riecker's examination. We expect it to be
16 reasonably short, 25 minutes or so.

17 THE COURT: Okay.

18 MR. QURESHI: Our suggestion would be to charge
19 through with that one and then --

20 THE COURT: That was my thought, too.

21 MR. QURESHI: Then take a break. Mr. Kamalani will
22 be I think a little bit longer than that.

23 THE COURT: Okay.

24 MR. QURESHI: So if we could do that after lunch,
25 that would be great.

1 THE COURT: Okay.

2 MR. LENDER: Your Honor, again, David Lender from
3 Weil Gotshal for the Debtors. For our next witness, we call
4 Robert Riecker. And for the record, his declaration is at
5 Tab 46 of your binder, Docket Number 2339. And we move his
6 declaration into the record as Mr. Riecker's direct
7 examination.

8 THE COURT: Okay. Can you raise your right hand,
9 please? Do you swear or affirm to tell the truth, the whole
10 truth, and nothing but the truth, so help you God?

11 MR. RIECKER: I DO.

12 THE COURT: And it's Robert, R-i-e-c-k-e-r?

13 MR. RIECKER: Correct.

14 THE COURT: Okay. Thank you.

15 MR. SERKIN: Your Honor --

16 THE COURT: Oh, I'm sorry, I forgot to ask Mr.
17 Riecker. I have your declaration, sir, which is dated
18 February 1, 2019. It's Tab 46 in my binder. Sitting here
19 today, would this still constitute your direct testimony?

20 MR. RIECKER: Yes, it does.

21 THE COURT: Okay. All right.

22 MR. SERKIN: Your Honor, for the record, Joseph
23 Serkin. And again, we have witness binders. May I
24 approach?

25 THE COURT: Sure.

1 CROSS EXAMINATION OF ROBERT RIECKER

2 BY MR. SERKIN:

3 Q Good afternoon, Mr. Riecker.

4 A Hello.

5 Q You are currently a member of the office of the CEO for
6 Sears, correct?

7 A Correct.

8 Q And you've also been the CFO of Sears since 2016,
9 correct?

10 A 2017.

11 Q 2017. And you've actually held a number of different
12 roles in the financial reporting group at Sears since 2005,
13 correct?

14 A Correct.

15 Q Now, I want to talk about the go-forward business plan
16 that was prepared post-filing. Okay? You started
17 participating in the creation of the company's business
18 plans pre-filing when you became CFO in 2017, correct?

19 A Yes.

20 Q Okay. And with respect to the go-forward plan post-
21 filing, you began working on the company's plan about two
22 weeks after the filing itself, correct?

23 A That's correct.

24 Q And you had a preliminary plan that was created on or
25 around November 12th, correct?

1 A I believe that's correct.

2 Q And then revised in December, correct?

3 A Yes.

4 Q And if you could look at Tab 1 in your binder. It's
5 Joint Exhibit 2. That is the revised plan from December
6 that we just talked about, correct?

7 A Yes.

8 Q And in preparing the go-forward plan, you and others
9 reviewed historical data related to the stores that were
10 part of that plan, correct?

11 A Correct. This plan was built on 505 stores. And I
12 reviewed the historical data related to those stores.

13 Q And in preparing the go-forward plan, you focused on
14 the last 12 months of historical performance, correct?

15 A That's correct.

16 Q The go-forward plan rests on a number of assumptions
17 that are laid out on Page 7 of Joint Exhibit 2. So if you
18 could flip to Page 7, please.

19 A Okay.

20 Q Okay. And Mr. Riecker, before we go through some of
21 these assumptions, you recall that you provided deposition
22 testimony with respect to the business plans, I think it was
23 two Fridays ago now. Do you recall --

24 A Yes, I did.

25 Q And you recall that in addition to providing deposition

1 testimony with respect to your individual knowledge, you
2 were designated as the corporate representative concerning
3 Sears' go-forward business plan, correct?

4 A Yes.

5 Q And that included the information and assumptions on
6 which the business plan was based, correct?

7 A Yes.

8 Q Now, let's discuss some of those assumptions. We won't
9 go through all of them. Let's start with the third bullet
10 on Slide 7. Management Operational Initiatives. Those are
11 the initiatives. And it says drive improving same-store
12 sales comps of negative 2.4 percent for fiscal year 2019,
13 positive 2.7 percent for fiscal year 2020, and positive 3.5
14 percent for fiscal year 2021. That's correct?

15 A Yes.

16 Q Okay. Now, with respect to -- well, just so we're all
17 clear, the same-store sales comps, that shows the change
18 year over year within the same month within the same store,
19 correct? So it's showing the change in sales, same store,
20 same month, next year. Correct?

21 A Correct. It is a measure that we measure on a daily
22 basis year over year.

23 Q Got it. And since the company has been in bankruptcy,
24 the current same-store sales comps have been roughly
25 negative low teens to 15 percent, correct?

1 A Yes.

2 Q And when we talk about the management operational
3 initiatives that are identified, those are related to the
4 Shop Your Way promotional program, correct?

5 A Yes.

6 Q And specifically they relate to the use of points and
7 the pricing of products, correct?

8 A Correct.

9 Q And you arrived to the negative 2.4 percent number in
10 looking at the company's same-store sales in 2018 leading
11 into the company filing for bankruptcy, correct?

12 A That is correct.

13 Q And if we flip to Page 11 in the same exhibit, then you
14 see the chart on the right-hand side of the page?

15 A Yes, I do.

16 Q And that shows the same-store sales improvement from
17 February to September of 2018, correct?

18 A Yes.

19 Q Then over the course of those eight months, it went
20 from, depending on whether you're looking at Sears or Kmart
21 stores, negative 17 percent to negative one percent, or
22 negative 15 percent to zero percent.

23 A Correct.

24 Q Yes. And you attribute this growth in the 2018 same-
25 store sales to a number of promotional activities related to

1 Shop Your Way, correct?

2 A Yes.

3 Q And you believe that those Shop Your Way initiatives
4 were mainly cash back offers, right?

5 A That was the majority of them, yes.

6 Q And you also understand that these Shop Your Way
7 initiatives in 2018 improved the company's gross margin at
8 the same time as improving same-store sales, correct?

9 A Correct.

10 Q Okay. And gross margin, that is simply the difference
11 between the revenue and the cost of goods paid for to attain
12 that revenue, correct?

13 A Correct.

14 Q Now, can you tell me specifically what the change in
15 margin percentage was between July and August of 2018?

16 A Without having that type of data in front of me, I
17 cannot tell you specifically those numbers.

18 Q Okay. Now, with respect to go-forward planning and
19 determining the negative 2.4 percent for 2019, you
20 anticipate that the same initiatives that led to the growth
21 reflected on Page 11 will be used going forward in 2019 and
22 beyond, correct?

23 A The same and or similar types of promotional items will
24 be used.

25 Q Okay. And, now, aside from being mainly cash back

1 offers that you talked about, you don't know what
2 specifically those Shop Your Way initiatives actually are,
3 correct?

4 A They traditionally will be very similar to what was
5 done during this time period and what say were cash back and
6 points offers. That allowed participants in the Shop Your
7 Way program to purchase products, receive cash back and
8 points that would then be available to be utilized in future
9 purchases of that member.

10 Q Now, with respect to the negative 2.4 percent number,
11 you don't know whether there was any specific analysis or
12 buildup based on historical numbers that was looked to to
13 arrive at that precise number of negative 2.4 percent,
14 correct?

15 A We have -- we utilized a number of data points,
16 including the specific performance of each one of these
17 stores and how these stores performed. The grid that you
18 show on the right -- that is shown on the right-hand side of
19 Page 11 is the performance of those 505 stores last year.

20 Q Understood. My question was a little bit different,
21 Mr. Riecker. With respect to the negative 2.4 percent
22 that's being projected in JX 2, this is the management's
23 best guess as to what the performance will be going forward
24 in 2019. You can't tell me what the specific analysis or
25 buildup was based on historical numbers in order to arrive

1 at that precise negative 2.4 percent number, can you?

2 A The negative 2.4 percent number is a calculation. The
3 sales numbers that were produced to drive this plan then
4 result in the negative 2.4 percent calculation.

5 Q Mr. Riecker, I'm going to refer to your deposition,
6 Page 46, Line 13. The question I asked, "With respect to
7 the precision associated with the negative 2.4 percent
8 number, do you know whether there was an analysis or a
9 buildup based on historical numbers?"

10 Answer, "I did not know firsthand based off of
11 historical numbers."

12 Question, "Do you know who would?"

13 Answer, "Mr. Sinha."

14 Did I ask those questions and did you give that
15 answer, those answers?

16 A That sounds correct.

17 Q Okay. Now, with respect to the projections for 2020
18 and 2021, the positive 2.7 percent in 2020 and the positive
19 3.5 percent in 2021 that are reflected in the company's
20 business plan, those are all based on the same actions and
21 activities that drive same-store sales growth for 2019 and
22 that did for 2018, correct?

23 A Correct.

24 Q And those actions are all primarily related to the Shop
25 Your Way initiatives, correct?

1 A Yes.

2 Q Now, turning back to Shop Your Way generally, Shop Your
3 Way was originally implemented at Sears in 2009, correct?

4 A In the fourth quarter of 2009 is when it started.

5 Q And the actual implementation of how the Shop Your Way
6 program has changed since 2009, correct?

7 A It has evolved.

8 Q But the underlying strategy of Shop Your Way and the
9 underlying tenets of Shop Your Way have not changed,
10 correct?

11 A For the most part, correct.

12 Q And sitting here today, you can't describe how the Shop
13 Your Way point system differs from other sorts of point
14 systems at other retailers, correct?

15 A That's correct.

16 Q I'm going to turn for a moment now, Mr. Riecker, to the
17 ESL business plan. ESL has a different plan than the
18 company, correct?

19 A Based on my cursory review of it, yes.

20 Q Okay. And if we could look at Tab 2, which is Joint
21 Exhibit 55. Exhibit 55 was a lender presentation prepared
22 by ESL and its advisors and made to potential ABL lenders on
23 January 24th of this year, correct?

24 A I believe that's the date.

25 Q And if you look at Slide 3, you'll note that you were

1 one of the presenters listed on Exhibit 55, correct?

2 A That's correct.

3 Q Okay. And did you actually attend the meeting and
4 present?

5 A I did.

6 Q Now, this presentation contains projections created by
7 ESL that are different than the company's projections,
8 correct?

9 A Yes.

10 Q And if you look at Page 14, you'll see in the table at
11 the bottom, "Preliminary 2019 Estimated Forecasted
12 Financials." Do you see that?

13 A Yes.

14 Q And the first line down, same-store sales percentage
15 change. Across all of the columns and including for the
16 entire year, it's a negative one percent. Do you see that?

17 A Yes.

18 Q And you don't know what analysis went into the ESL plan
19 to make ESL believe this number is achievable, correct?

20 A I do not.

21 Q Let's look at some of the specifics, because there is
22 some similarity in the two plans. One of the initiatives
23 that's contained in both is on Page 17. So if we can go
24 back to Tab 1, Joint Exhibit 2, Page 17. This is in the
25 company's binder. And you'll see, Mr. Riecker, just to

1 understand where we are in the presentation, if you go back
2 to Slide 16 -- again, this is Tab 1 in the binder, Slide 16.
3 This is a section titled, "Our Go-Forward Initiatives". Do
4 you see that?

5 A Yes.

6 Q Okay. So these are the go-forward initiatives and the
7 company's business plan from December 2018, correct?

8 A Yes.

9 Q Okay. And then go to Slide 17. The initiative --

10 THE COURT: Seventeen in Tab --

11 MR. SERKIN: Sorry, 17 in Tab 1, Your Honor.

12 THE COURT: Tab 2.

13 Q Initiatives two and three, assortment optimization and
14 in-stock and replenishment. Do you see that?

15 A In Tab 1 on Page 17?

16 Q Tab 1, Page 17. I see "Small store footprint" on Page
17 17.

18 MR. SERKIN: Your Honor, may I approach and see if
19 --

20 THE COURT: Yeah. Why don't you -- because that -
21 - I think you maybe have the wrong page.

22 Q So Mr. -- I'm looking at Tab 1, Page 17, at the bottom
23 right-hand corner of the slide. It's in very light print.
24 Do you see that?

25 A Yes.

1 Q And initiatives number two and three are assortment
2 optimization and in-stock and replenishment. Do you see
3 that?

4 A Yes.

5 Q And can you take just a minute -- and you don't need to
6 read it out loud, but at the base case forecast, the
7 description for those two. If you could take just a moment
8 to read the description to yourself.

9 A Okay.

10 Q And then if you look at the next slide, Slide 18,
11 you'll see a bridge showing the financial impact based on
12 key initiatives. And if you look at two and three, which
13 correlate to the two and three on Page 17 for assortment
14 optimization and in-stock and replenishment, the potential
15 financial impact is positive \$38 million of those two. Do
16 you see that?

17 A Yes.

18 Q Now, if we can go to the ESL plan. So Tab 2, Page 32.

19 A Okay.

20 Q And if you can read the heading, states, "Assortment
21 optimization and in-stock and replenishment." Do you see
22 that?

23 A Yes.

24 Q And the subheading under that indicates, "Assortment
25 optimization and in-stock and replenishment initiative

1 drives \$80 million in incremental EBITDA in fiscal year
2 2019." Do you see that?

3 A Yes.

4 Q And you have no understanding of how these same
5 initiatives drive very different incremental EBITDA between
6 the two plans, correct?

7 A I don't have a detailed knowledge of the numbers on
8 Page 32.

9 Q Okay. Mr. Riecker, I want to look at another slide in
10 the lender presentation, so what reflects ESL's business
11 plan. Slide 29. We're still on Tab 2.

12 A Okay.

13 Q Okay. This slide is titled, "Significant SG&A Run Rate
14 Impact From Reductions". Do you see that?

15 A Yes, I do.

16 Q And before we look in more detail at this slide, let me
17 ask you, have you had any -- strike that. You haven't had
18 any discussions with ESL or any of its advisors about what
19 their plan is with respect to any planned future reductions
20 post-closing of the sale, correct?

21 A I have not.

22 Q And you don't know in any other way or have any other
23 understanding about their intention with respect to future
24 payroll reductions, correct?

25 A I do not.

1 Q In other words, what they might do with employees post-
2 close, you don't know?

3 A Correct.

4 Q So then if we look at Slide 29 and we look at the
5 bottom, this document shows a bridge, or how they will
6 accomplish certain of the SG&A reductions that they are
7 predicting. You'll see Wave 1, Wave 2, and then a series of
8 four that relate to Wave 3. Do you see that?

9 A Yes.

10 Q And Wave 1 and Wave 2 are -- those are head count
11 reductions that have already occurred, right?

12 A Correct.

13 Q And those are the green check marks that are completed,
14 right?

15 A Yes.

16 Q And those reductions amounted to a savings of \$84
17 million and \$57 million respectively, correct?

18 A Yes.

19 Q Okay. With respect to the Wave 3 reductions that are
20 next to that, you'll see that the supply chain reductions
21 are on track, correct?

22 A I believe that's correct, yes.

23 Q And the sourcing are started based on the arrows to the
24 right?

25 A Yes. Based on the legend?

1 Q Based on the legend, yes. And the Wave 3 IT reductions
2 are -- there's a timing shift, and those amount to \$32
3 million. Do you see that?

4 A Yes.

5 Q And then Wave 3 reductions, other, are \$18 million. Do
6 you see that?

7 A Yes.

8 Q So with respect to those head count reductions, you
9 don't know how many people are included in those reductions,
10 correct?

11 A I don't know the specific head count number.

12 Q Okay. And you don't know whether the people contained
13 in those employee reductions are included in the 45,000
14 employees ESL is providing or intends to or is suggested
15 that they were provide employment to post-close, correct?

16 A Correct.

17 Q Mr. Riecker, during the presentation that you were at
18 and that was made to potential ABL lenders, when you
19 presented, there were no questions from the lenders that you
20 recall about whether ESL could achieve the targets in this
21 plan, correct?

22 A That's correct.

23 Q And there were no questions that you recall generally
24 about the assumptions ESL made and the projections that were
25 included in ESL's plan, correct?

1 A Correct.

2 Q The questions that you remember from lenders were more
3 around the collateral that supported the loan as opposed to
4 the business plan associated with the loan, correct?

5 A That's my recollection.

6 Q Now, prior to presenting to the lenders, the company
7 and the office of the CEO reviewed the ESL business plan but
8 had no discussion with ESL as to whether it agreed with the
9 plan, correct?

10 A That is correct.

11 Q And you did not evaluate the ESL plan in the course of
12 evaluating ESL's bid, correct?

13 A That is correct.

14 Q You did not provide any analysis to the board or
15 restructuring committee whether the plan was achievable,
16 correct?

17 A I did not, correct.

18 Q In fact, you don't know whether anyone at the company
19 did, correct?

20 A If it would have been someone at the company, it would
21 have been me.

22 Q Okay. And you didn't.

23 A I did not.

24 Q And no one asked you for your opinion about whether the
25 ESL plan was achievable, correct?

1 A Not to my recollection, correct.

2 Q Mr. Riecker, I want to turn now to a document that is
3 at Tab 3 in your binder. It's Joint Exhibit 152. Mr.
4 Riecker, there's an email and an attachment. The email is
5 from Luke Valentino, dated January 3rd at 5:25 P.M., to the
6 members of the restructuring committee, correct?

7 A That is correct.

8 Q You're copied on this email, aren't you?

9 A Yes.

10 Q And Mr. Valentino is attaching a letter that's sent on
11 behalf of the office of the CEO, correct?

12 A That is correct.

13 Q Okay. Let's look at the letter, the attachment itself.
14 This is a letter signed by the members of the office of the
15 CEO, including you, correct?

16 A Yes.

17 Q It's addressed to the members of the restructuring
18 committee, right?

19 A Correct.

20 Q Can you read the first paragraph, please?

21 A "On behalf of the 50,000 employees of Sears Holdings
22 Corporation, we are respectfully requesting that a bid,
23 which could allow the whole company to be part of an ongoing
24 business concern, considered qualified and allowed to
25 participate in the going concern auction process. We firmly

1 believe this would be better than the alternative."

2 Q And You however actually didn't write this letter at
3 the request of the employees, did you?

4 A We did write this letter based on our representation of
5 all of the employees of Sears Holding Corp.

6 Q But you actually wrote this letter because Eddie
7 Lampert asked you to, right?

8 A Eddie Lampert had a conversation with myself, Ms.
9 Munjal, and Mr. Ladley, asking our thoughts of whether we
10 support or do not support a go-forward company. Did not
11 request us to write a letter, did not require us to write a
12 letter.

13 Q And if you could turn to Tab 5 in your binder. It's JX
14 100. JX 100 are the minutes of a meeting of the
15 restructuring committee dated January 4th, 2019. Do you see
16 that?

17 A I do see that.

18 Q And -- it's Joint Exhibit 114 for the record. And if
19 you look back to your letter that was Joint Exhibit 152 at
20 Tab 3. It's not dated, but it was sent to the restructuring
21 committee the evening of January 3rd. Do you see that?

22 A It was sent to the board of directors of the company,
23 which includes the restructuring committee.

24 Q Okay, understood. And so if we go back to Joint
25 Exhibit 114, the minutes from January 4th, that's the next

1 day, correct?

2 A I'm assuming that's correct, yes.

3 Q And you'll see that this meeting was held by phone on
4 January 4th beginning at 12:30 Eastern. Do you see that?

5 A I do see that.

6 Q And if you look underneath the materials presented, you
7 are identified as present by invitation, correct?

8 A If you say so, yes. Somewhere within there.

9 Q It is the second line, second sentence, "Also present
10 by invitation were Rob Riecker, CFO," as well as others,
11 correct?

12 A Got it.

13 Q If you could turn to the third page. The second
14 paragraph. Can you read that sentence, please?

15 A "Mr. Schrock reported to the committee that ESL had
16 asked for the letter from the office of the chief executive
17 to be drafted and that Cleary had indicated that it had seen
18 a draft as stated."

19 Q Can Cleary is the law firm that represents Mr. Lampert
20 and ESL, correct?

21 A Yes.

22 MR. SERKIN: No further questions, Your Honor.

23 THE COURT: Any redirect?

24 MR. PERDEW: Very, very brief, Your Honor.

25 MAN 1: Your Honor, just a few minutes of cross.

1 THE COURT: Sure, that's fine.

2 MR. PERDEW: Your Honor, Russell Purdew of Locke
3 Lord on behalf of the Pension Benefit Guaranty Corporation.

4 REDIRECT EXAMINATION OF ROBERT RIECKER

5 BY MR. PERDEW:

6 Q Good afternoon, Mr. Riecker. In addition to your role
7 with the Debtors, you were also on the board of managers of
8 KCD IP, LLP; is that right?

9 A That is correct.

10 Q Since when have you held that position?

11 A I do not know.

12 Q Has it been since the filing?

13 A It has been since the filing.

14 Q Okay. The KCD board consists of three managers, is that
15 right?

16 A That's correct.

17 Q Other than you, who are the other two?

18 A A Mr. Prakash and -- without looking at the name, I
19 can't recall the third name. But it's not a Sears Employee.

20 Q Mr. Prakash is a Sears employee, is that right?

21 A That's correct.

22 Q And the third manager is the independent manager who
23 does not have any affiliations with the Debtors, is that
24 right?

25 A That is correct.

1 Q And the business of KCD IP, LLP is holding and
2 licensing Kenmore and Diehard trademarks to Debtors, is that
3 correct?

4 A To the debtors and I believe others, yes.

5 Q The debtors are Sears Roebuck and Kmart?

6 A Yes.

7 Q And the revenue that KCD receives are the royalty
8 payments related to those trademarks, is that right?

9 A That is correct.

10 Q And since the filing of this case, those debtors have
11 stopped making their royalty payments to KDC, is that your
12 understanding?

13 A Yes.

14 Q Has KCD retained any independent counsel to advise it
15 with respect to this bankruptcy?

16 A Not to my understanding.

17 Q The only firm that advises it is Weil Gotshal, is that
18 correct?

19 A Correct.

20 Q As part of the proposed sale, KCD has now approved as
21 of January 30th giving an exclusive and perpetual license of
22 the Kenmore and Diehard trademarks to the buyer in the sale,
23 is that right?

24 A That is correct.

25 Q And it's your understanding that that was a condition

1 precedent to closing?

2 A That's my understanding, yes.

3 Q And that was decided on January 30th?

4 A The exact date I can't tell, but around there.

5 Q Did the independent manger of KCD vote for that
6 exclusive license?

7 A They didn't vote.

8 Q It was approved by the vote of the two managers who are
9 affiliated with the debtors, correct?

10 A Correct.

11 Q The KCD -- we talked before about the fact that the
12 Debtors have stopped paying KCD royalties. KCD has
13 therefore accrued a claim for those royalties, is that
14 correct?

15 A That would have to be based on the discussions that
16 I've had with counsel, but it would appear so.

17 Q The number that I've seen, and the number I believe you
18 discussed at your deposition, is \$112 million; is that
19 correct?

20 A I believe that's the correct amount.

21 Q I've also heard the number around the administrative
22 and solvency calculation of around \$63 million of the
23 shortfall that is going to be managed as part of the sale
24 transaction. Is that right?

25 A I believe Mr. Meghji updated that number this morning,

1 and it's around \$43 million.

2 Q Okay. But that number does not include the \$112
3 million KCD royalty claim, is that right?

4 A That is correct.

5 Q And so the calculation of 63 million, updated to 43
6 million, assumes no payment to KCD for those royalties; is
7 that right?

8 A That would be correct.

9 MR. PERDEW: Your Honor, can I approach the
10 witness to hand him Joint Exhibit 39, please?

11 THE COURT: Sure.

12 MR. PERDEW: Thanks. Your Honor, would you like a
13 copy?

14 THE COURT: Yes. Thanks.

15 Q And this is Docket Number 1731. Mr. Riecker, have you
16 ever seen this document before?

17 A I believe I've seen it from a cursory review
18 perspective.

19 Q Okay. Do you know what it is?

20 A Without reading it, it looks like it's about the
21 bidding procedures.

22 Q Okay. Has anyone ever made you aware of the fact that
23 this document, which is titled Notice of Cure Costs,
24 Potential Assumption and Assignment of Executory Contracts,
25 relates in part to KCD's \$112 million royalty claim?

1 A That specificity has not been discussed with me.

2 Q Has KCD ever discussed at a board meeting the need to
3 respond to this document?

4 A I do not believe that at the board meetings this was
5 discussed.

6 Q And so to your knowledge then KCD has never filed a
7 response to this document?

8 A I can't answer yes or no on that.

9 Q Okay.

10 MR. PERDEW: Your Honor, nothing else.

11 THE COURT: Okay.

12 MR. LENDER: Again, Your Honor, David Lender from
13 Weil Gotshal for the Debtors.

14 REDIRECT EXAMINATION OF ROBERT REICKER

15 BY MR. LENDER:

16 Q Just a few questions, Mr. Riecker, if we could. And
17 let's just start briefly back to the company's business
18 plan, tab, Exhibit 1. I just want to make sure I understand
19 your testimony from before. Your testimony was that same-
20 scale stores the trend was going up for the entire year?

21 A For 2018, yes.

22 Q Yes. And is your testimony also that for 2018 margins
23 were also going up?

24 A Yes.

25 Q And were prices also going up in 2018?

1 A It's a combination of pricing, product costs, et
2 cetera, that go into the margin calculation.

3 Q Thank you. You also were asked about Shop Your Way.
4 Mr. Riecker, were changes made in the past year in the
5 approach to Shop Your Way and how it is operated?

6 A The delivery of the promotional side of Shop Your Way
7 was adjusted throughout the year to achieve the results that
8 were achieved.

9 Q And those changes, are they described and set forth in
10 your declaration?

11 A I believe that they are.

12 Q Okay. The last thing I wanted to just ask you about
13 briefly is Mr. Serkin asked you to turn to Page 7 of the
14 company's business plan. I just wanted ask you a quick
15 question on that. And you recall he asked you about the
16 company's business plan, which projects for 2019 fiscal year
17 negative 2.4 percent same-store sales. Do you recall that?

18 A Yes.

19 Q I think you testified that for ESL it was negative one
20 percent?

21 A Yes.

22 Q Now, the company's business plan here also has a
23 projection for gross margin improvement in 2019. Do you see
24 that?

25 A Yes.

1 Q And can you just tell us what that is in the company's
2 business plan?

3 A So in the company's business plan we assume that based
4 on better product selection from our vendors, vendor
5 confidence coming back, that we would be able to get better
6 selection of product than we had going into and during
7 bankruptcy that would enable us to improve our margin rates
8 between 250 and 300 basis points.

9 Q And do you recall what assumption ESL made in its
10 business plan as it pertains to gross margin improvement?

11 A I believe that there was around a hundred basis points.
12 It was less than the company's.

13 Q So to make sure I understand it, some places the
14 company's business plan was more conservative and in other
15 places the ESL business plan was more conservative?

16 A That is correct.

17 MR. SERKIN: Objection, Your Honor. Leading,
18 lacks foundation.

19 THE COURT: It's limited to just the two points
20 that's been made.

21 Q Mr. Riecker, in Paragraph 31 of your declaration, you
22 wrote, "Because the ESL plan is similar to the company's go-
23 forward plan presented by the management team in November
24 and December of 2018, I believe the objectives in the ESL
25 plan are achievable and the projections are reasonable based

1 on, among other things, its smaller footprint." Can you
2 still stand by that testimony?

3 A Yes, I do.

4 Q Thank you, Mr. Riecker. No further questions.

5 THE COURT: Do you have any --

6 MR. LENDER: Nothing further, Your Honor.

7 THE COURT: On that last question, is the smaller
8 footprint in your view under the ESL plan a positive or a
9 negative as far as in comparison to the company's earlier
10 business plan with a larger footprint?

11 MR. RIECKER: I believed that it is a positive to
12 the company.

13 THE COURT: And why is that?

14 MR. REICKER: Because over the past few years the
15 company has carried money-losing stores. These stores have
16 all been profitable within one or more of the last three
17 years. And I believed that that footprint allows us to
18 properly structure the SG&A of the company to serve that
19 smaller footprint, which will allow those stores to be more
20 profitable than they had been in the past.

21 THE COURT: What about negotiating leverage with a
22 larger footprint? That would argue that it would be better
23 to have a larger footprint, right? With vendors and the
24 like.

25 MR. REICKER: Yes, that is one of the -- could be

1 one of the concepts. I guess how I would respond to that is
2 going into bankruptcy over the last couple of years we've
3 had difficulty in negotiating with our vendors. We believed
4 that the smaller footprint will allow us to buy the right
5 amount of product for those stores as opposed to having
6 stores where I'm trying to optimize the inventory and
7 merchandise contained in those stores and starving other
8 stores or potentially starving other stores.

9 THE COURT: Okay. Any questions on that?

10 MR. LENDER: No questions.

11 THE COURT: Okay. You can step down. Okay, it's
12 about quarter to one. There are two more witnesses to come.

13 MAN 1: Just one more for us, Your Honor.

14 THE COURT: Oh, I'm sorry, yes. Which is an ESL
15 witness. And then we have three from the committee, right?

16 MAN 1: Yes, Your Honor.

17 THE COURT: Okay. All right. So appreciate --
18 you're going to have to walk fast to get a sandwich. But
19 can we get back here around 1:30? I mean, a practical
20 matter. It's going to take a while for you all to get in
21 again. So be back here as if you were going to start at
22 1:30. I have a feeling that we might start a little later.
23 And I will ask those of you who are taking the laboring war
24 hero to have some designatee in the front of the line who
25 maybe could just eat some pretzels for lunch and save a

1 space for those of you that -- so we can get started on
2 time.

3 The last thing I'll say is that in a normal
4 transaction like this that requires bankruptcy court
5 approval where there's an active committee, the buyer knows
6 that it may not have put its absolute bottom line on the
7 table for the transaction. Committee's cross-examination
8 has highlighted some issues pertaining to the actual terms
9 of the APA and in some cases the lack of certain terms,
10 including with respect to a transition services agreement
11 and a mechanism for how to liquidate Section 503(b)(9)
12 claims so that the liquidation cost is not borne by the
13 estate.

14 Normally I would expect a committee and a bidder
15 or a buyer to negotiate those sorts of points. And I hope
16 that happens. Because otherwise it's a bit of empty
17 rhetoric as opposed to the larger issue, which is does the
18 deal as drafted make sense. So I would urge, since there
19 are many of you here, that some subset of you consider the
20 key points of potential improvements to this transaction.

21 So I'll see you let's say at 1:30, although I have
22 a feeling it'll be 15 minutes later.

23 (Recess)

24 THE COURT: Please be seated. Okay, we're back on
25 the record in re Sears Holdings Corporation. And I think we

1 are now at Mr. Kamlani.

2 MR. BROMLEY: Yes, Your Honor. James Bromley of
3 Cleary Gottlieb on behalf of ESL. We'd like to call Mr.
4 Kunal Kamlani to the stand.

5 THE COURT: Would you raise your right hand,
6 please? Do you swear or affirm to tell the truth, the whole
7 truth, and nothing but the truth, so help you God?

8 MR. KAMLANI: I do.

9 THE COURT: And it's K-a-m-l-a-n-i?

10 MR. KAMLANI: It is.

11 THE COURT: Kunal, K-u-n-a-l.

12 MR. KAMLANI: Correct.

13 THE COURT: Okay. And Mr. Kamlani, you submitted
14 a declaration last week in connection with this hearing.
15 Sitting here today, would that declaration still constitute
16 your direct testimony?

17 MR. KAMLANI: It would.

18 THE COURT: Okay. All right. Want to cross?

19 MR. BROMLEY: And just as a matter of form, Your
20 Honor, we'd like to move the declaration in as his direct
21 testimony.

22 THE COURT: Okay.

23 MR. QURESHI: Thank you, again. For the record,
24 Abid Qureshi, Akin Gump Strauss Hauer on behalf of the
25 committee.

1 Your Honor, I've left a witness binder on the
2 witness table. May I hand one up, you know?

3 THE COURT: Yes.

4 MR. QURESHI: May I proceed, Your Honor?

5 THE COURT: Yes.

6 CROSS-EXAMINATION OF KUNAL KAMLANI

7 BY MR. QURESHI:

8 Q Mr. Kamlani, good afternoon, sir.

9 A Good afternoon.

10 Q You are currently a member of the board of directors at
11 Sears, correct?

12 A I am.

13 Q And you first became a member of the board in
14 approximately November of 2014, right?

15 A That's correct. I believe it was December 3rd of '14.

16 Q And at the time you joined the board, you also became a
17 member of what then was called the Related Party
18 Transactions Committee, correct?

19 A That's correct.

20 Q And the role of that committee, among other things
21 perhaps, but the role included reviewing all transactions
22 that were being considered or entered into between Sears on
23 the one hand and ESL and Mr. Lampert or any of his
24 affiliates on the other, correct?

25 A That's correct.

1 Q So you were part of both the board of directors of
2 Sears and a member of the Related Party Transactions
3 Committee at the time the Seritage transaction came before
4 the board, correct?

5 A Yes, I was.

6 Q And when I refer to the Seritage transaction, you
7 understand what I mean, right? The transaction that was
8 investigated by the subcommittee.

9 A I do.

10 Q Okay. And indeed you voted to approve the Seritage
11 transaction in your role as a member of the Related Party
12 Transaction Committee, correct?

13 A I did.

14 Q And subsequent to that, in approximately 2016, you
15 became the president of ESL, correct?

16 A Correct.

17 Q So sometime after the Seritage transaction happened,
18 did you then become a full-time employee of ESL?

19 A I did, in March of '16, 2016.

20 Q Okay. And subsequent to becoming a full-time employee
21 at ESL, you continued to maintain your position on the board
22 of directors at Sears, correct?

23 A I immediately stepped down from the Related Party
24 Transaction Committee as well as the Audit Committee.

25 Q Right. Okay. If you could can just speak up a little

1 bit, please, it would be helpful.

2 A Sure.

3 Q Just a couple of questions about the structure of ESL,
4 where you are presently employed. Am I right, sir, that at
5 least prior to the present transaction that we are here in
6 court on today, Sears comprised approximately 50 percent of
7 the assets under management of ESL, its investment in Sears?

8 A That -- that approximately.

9 Q Okay. And in addition to that, approximately 20
10 percent of ESL's value was invested in Seritage? Again,
11 rough order of measurements here?

12 A I actually couldn't tell you the exact percentage.

13 Q Okay. And with respect to the amount of ESL's assets
14 under management tied up in Sears, do you know whether that
15 number's going to go up if this transaction closes?

16 A I do not.

17 Q Okay. Am I right that of ESL's assets under
18 management, approximately 75 percent of that money is
19 actually Mr. Lampert's as opposed to third-party investors
20 in ESL?

21 A With 20 percentage points, that might be right.

22 Q Okay. Now let's talk a little bit about your role in
23 the business planning process at Sears. So prior to joining
24 the Board of Directors of Sears, you had no experience in
25 retail at all, right?

1 A No, that's not correct. I was on the board of Staples,
2 which is one of the largest retailers in the country by size
3 of revenue from 2015 until we sold the company to a private
4 equity firm I believe it was mid-2017, but I might be off on
5 that -- on that date. But I served on that board, and I was
6 a member of several different committees on that board,
7 including the audit committee, finance committee, the
8 compensation committee, also.

9 Q Okay. Perhaps you misheard me. Prior to joining with
10 Sears Corp, you had no experience in retail?

11 A You're -- you're correct, prior to 2014.

12 Q And you had no role while at Sears in the development
13 of business plans in your capacity as a board member, right?

14 A Can you repeat the question?

15 Q Sure. In your role as a member of the board of
16 directors of Sears, you did not have a role in developing
17 the company's business plans, as distinct from reviewing it?

18 A I believe that would be an accurate statement.

19 Q What you did is you regularly reviewed business plans
20 that were put together by the management team, right?

21 A Correct.

22 Q And as a board member, you also had a role in approving
23 those business plans, correct?

24 A I did.

25 Q Now there was some testimony earlier today about a

1 debtor business plan from December of 2018. You had no
2 involvement putting that plan together, did you?

3 A No, I did not.

4 Q And that's the plan that serves as the basis for the
5 ESL business plan for go-forward Sears, correct?

6 A It does.

7 Q Okay. Now I want to talk a little bit about the
8 historical performance of the company. I'm going to try to
9 do this as quickly as I can with as few documents as I can.
10 So you joined the board late 2014, so am I right that at
11 least during that period of time the ordinary course process
12 at Sears was in January/February of each year is when
13 business plans would be presented to the board and in that
14 time frame, they would get finalized and approved, right?

15 A Discussions, I think, began prior to January/February,
16 but that -- that would be the approval time frame.

17 Q Okay. Now what I'd like to do is if you have in your
18 binder, sir, if you'd turn to Tab 9, now to try to save some
19 time, what I have in Tab 9 are some excerpts from an expert
20 report that the Committee has submitted in this case. And
21 what I want to show you in particular, and we've got the
22 full report if you need to see it. Indeed, we have all of
23 the underlying business plans if you need them. But what is
24 labeled as Exhibit 12 to that report, it's in the last page
25 of that tab, and it's a bar chart. And what it does is it

1 just compares projections in each year to historical
2 performance. Do you see that?

3 A I do see the page.

4 Q Okay. And what I'd like to understand, Mr. Kamlani,
5 let's take a look at 2015, all right. So 2015 at the time
6 of the projections for 2015, you were on the Board of
7 Directors at Sears, correct?

8 A I -- I was. Can I just take a minute to --

9 Q Yeah, sure.

10 A -- figure out what I'm looking at?

11 Q Sure.

12 A Thanks. What's the P in after EBITDA?

13 Q Pension.

14 A Pension.

15 MR. BROMLEY: Your Honor, I'm a little confused as
16 to exactly what we're doing. Mr. Kniffen hasn't testified,
17 and his report hasn't been admitted. This is an excerpt
18 from it. I think the witness should have the entire report
19 in front of him for context.

20 MR. QURESHI: Your Honor, I'm happy to do that.
21 I'm happy to pull out every one of these business plans and
22 every set of projections and do it that way. I'm merely
23 trying to have a record as to this witness's role in
24 approving projections and when those were approved, what the
25 actual numbers were. And so I'm certainly not directing him

1 to this exhibit for proof of what the numbers were.

2 THE COURT: Well, he's already testified about his
3 role in approving projections.

4 MR. QURESHI: Yes.

5 THE COURT: So the other point is the actual
6 numbers.

7 MR. QURESHI: Yes.

8 THE COURT: So I think you could ask him those
9 questions and then maybe ask him if this exhibit refreshes
10 his recollection.

11 MR. QURESHI: Sure. Why don't we do it that way.

12 THE COURT: Okay.

13 BY MR. QURESHI:

14 Q So, Mr. Kamlani, if you look at 2015 on this chart, so
15 again, we're looking at a summary that was prepared by the
16 Committee's expert, and it's in your binder. Do you have
17 that in front of you?

18 A I do.

19 Q And you'll see that what it shows is that in 2015, what
20 Sears projected for EBITDA was positive \$461 million, the
21 green bar, right?

22 A I do see that here.

23 Q Okay. And you would have been on the board that
24 approved that set of projections at that time, correct?

25 A Yeah. The reason I asked you about the P earlier is

1 'cause I don't ever recall seeing an EBITDAP figure in my
2 entire stay on the board. We looked at EBITDA.

3 Q Okay.

4 A But what's -- I just want to make that clear.

5 THE COURT: You're not doing what I suggested.
6 Look, this is a summary. You're asking him to accept the
7 validity of this summary and then asking him whether it's
8 correct. It doesn't really follow. So I mean you're going
9 to have a chance to get that in later. Unless he has a
10 photographic memory, I don't know if he's going to be able
11 to remember the exact projections.

12 MR. QURESHI: Okay. Your Honor, I was just trying
13 to shortcut it and do this a little bit quicker.

14 THE COURT: Well, no, but it doesn't --

15 MR. QURESHI: Let me try it another way.

16 THE COURT: Okay.

17 BY MR. QURESHI:

18 Q Put the document aside, Mr. Kamlani. Do you recall
19 generally that in every year that you were on the board of
20 directors of Sears and in every year that you approved
21 business plans, it was a massive miss relative to the
22 projections?

23 A I do recall us missing our plan for every single year
24 since I've been on the board, yes.

25 Q Right. And do you recall those misses in some years

1 exceeding a billion dollars?

2 A If -- if -- if not a billion, 800 million. But you may
3 be right.

4 Q Okay. And so in every year from 2014 since you joined
5 the board, so '15, '16, '17, '18, the magnitude of the miss
6 when comparing Sears' actual performance in its projections
7 was in the many hundreds of millions of dollars, correct?

8 A Yes.

9 Q Okay. Now --

10 THE COURT: Well, that was shorter.

11 BY MR. QURESHI:

12 Q Now let's take a look at the exhibit behind Tab 7,
13 please, and that is JX-139. Do you have that document in
14 front of you, sir?

15 A Tab 7, Project Transform Business Plan. I do.

16 Q And does this represent ESL's business plan for the go-
17 forward business?

18 A There are many versions. If you give me a minute to
19 look at the page, I can --

20 Q Sure.

21 A I'm sorry. I take that back. This is the larger plan
22 without the financials. Yes, this is it.

23 Q I'm sorry. I didn't --

24 A Yes, this is -- this is the business plan.

25 Q Okay.

1 A There is a financial component that goes along with
2 this business plan, and I just so I know if that's in here
3 or not.

4 Q Okay. It's in a separate exhibit.

5 A Okay.

6 Q And we will get to that.

7 A So, yes, this is a part of the business plan.

8 Q Okay. And this business plan, if I'm right, sir, was
9 developed just a few weeks after the company's stand-alone
10 business plan that we talked about earlier that was in
11 December of 2018, right?

12 A That sounds -- that sounds about right. This business
13 plan would have come together in mid to late-November.

14 Q Okay. Look at Page 4, if you could, please.

15 A Sorry, page?

16 Q Four. And you will --

17 A Executive summary?

18 Q Yes. And you will see on Page 4 underneath the first
19 bullet point, there's a line that says, "Base case assumes
20 brick and mortar of same-store sales growth of negative 1
21 percent in 2019." Is that your understanding of what the
22 forecast is for ESL business plan for 2019?

23 A It is.

24 Q And you understand that to be, well, you understand
25 that in the December stand-alone business plan prepared by

1 the company, the forecast for that same metric, same-store
2 sales growth, was negative 2.4 percent, right?

3 A I'm aware of that.

4 Q Okay. And you're aware that Mr. Riecker in the
5 declaration that he submitted expresses the view that for
6 2019 a reasonable projection could be anywhere between the
7 negative 1 percent in your plan and the negative 2.4 percent
8 in his plan, right?

9 A I haven't memorized his declaration, but I take your
10 word for it.

11 Q Okay. And over the same period of time that in the ESL
12 plan you're projecting negative 1 percent same-store sales
13 growth, you're also projecting an increase in margin growth
14 of 125 basis points, right? It's the next bullet --

15 A Yes.

16 Q -- on the executive summary. And positive EBITDA for
17 2019 of \$338 million, correct?

18 A Just to be clear, that \$338 million is for the retail
19 footprint only and not Sears consolidated EBITDA, which from
20 memory is only \$25 million.

21 Q Okay. And for the retail footprint, that positive
22 EBITDA that you're projecting for 2019 continued on an
23 upward trajectory into the out years of the plan, correct?

24 A Yeah. And I would note that on the latest 12-months
25 basis, the 4 Wall EBITDA for these stores is positive today.

1 I don't know the number from memory, but it's north of \$100
2 million.

3 Q And turn to Page 46, please, of this plan. And you'll
4 see that Page 46 says, "Optimized SG&A Summary Description
5 of Key Initiatives." Do you have that?

6 A Yes.

7 Q Okay. And am I right, sir, that what ESL is projecting
8 is that SG&A is going to fall in half from \$1.2 billion
9 dollars where it currently is approximately to 600 -- to an
10 annual run rate of \$600 million, right?

11 A Yes. Our SG&A plan is consistent with the company's
12 view of SG&A except for timing and additional overhead that
13 we've put in for additional hires.

14 Q Okay. And, again, sir, to try to move this along, I'm
15 not asking you if it's consistent with the company or not.

16 A Okay.

17 Q Your counsel will have an opportunity to ask you those
18 questions, okay?

19 A Okay.

20 Q Now that forecast that you have of cutting SG&A from
21 1.2 billion to an annual run rate of \$600 million, you
22 forecasted that can be achieved at the same time as
23 increasing margin, correct?

24 A Yes.

25 Q And ESL does not have a detailed model or at least did

1 not at the time this business plan was put together that
2 identified the impact of the various SG&A initiatives on
3 gross margin, correct?

4 A We spent four days in Hoffman Estates doing detailed
5 due diligence on just about every material business unit of
6 the company, including SG&A. And I was comfortable with the
7 relationship between the right sizing of the company as it
8 relates to SG&A as well as gross margin.

9 Q That's not my question, sir.

10 A Okay.

11 Q My question was simply isn't it the case that there is
12 no detailed model that ESL has that shows the impact of the
13 various SG&A initiatives on gross margin.

14 A You're correct. I do not have an SG&A model tied to
15 gross margin.

16 Q All right. Let's talk a little bit about what the
17 business plan says in terms of store closures. Now, you in
18 your declaration -- and feel free to look at it, if you
19 like. It's at the front of the binder. You characterize
20 ESL's bid for Sears as the "only available opportunity to
21 preserve the jobs of approximately 45,000 Sears associates
22 while returning severance pay to pre-petition levels." You
23 recall that, right? That's your view?

24 A Yes.

25 Q Okay. And as you sit here today, sir, you're not able

1 to tell me what the Sears store count is going to be at the
2 end of, say, 2019?

3 A I -- I could not tell you that, no.

4 Q Okay. And, in fact, sir, the store count at the end of
5 2019, that's going to be a function of a number of factors,
6 right, one of which is how much real estate ESL decides to
7 sell between now and the end of the year, right?

8 A As well as many other factors --

9 Q Sure.

10 A -- including how many new stores we opened.

11 Q Sure. Well --

12 A And how many dark stores we sell.

13 Q Okay. So let's deal with those. Your business plan
14 makes no assumption about opening new stores, right?

15 A That is correct. We took a very conservative view on
16 that.

17 Q And you also have nothing in your business plan about
18 what the capital expenditures would be that would be
19 associated with any new store openings, correct?

20 A That is correct.

21 Q Okay. Now, at the time that you and I met at your
22 deposition, sir, the ESL business plan assumed that ESL
23 would sell \$200 million a year worth of real estate for each
24 of the first three years of this plan, so that's \$600
25 million in the first three years, correct?

1 A Correct.

2 Q And ESL has not identified with specificity which
3 parcels of real estate it is going to sell in order to
4 generate that \$600 million in proceeds, right?

5 A We do have a pipeline report, which informs our view of
6 what proceeds we think ultimately can be achieved.

7 Q And when did that pipeline report first come into
8 being?

9 A On a pre-petition basis, I probably got the pipeline
10 report once every two weeks. Since the petition date, the
11 first time I saw the pipeline was probably ten-ish days ago.

12 Q Okay. So at the time I took your deposition when you
13 told me that you were not able to identify any specific
14 properties that are going to be sold to generate those
15 proceeds. Has that answer changed? Are you now able to?

16 A Well, I'm able to tell you I've got confidence that I
17 think we'll be able to generate more than \$200 million in
18 real estate proceeds in the first year based on the pipeline
19 report that I saw.

20 Q Okay. And of the 425 go-forward stores that are part
21 of the ESL bid, am I right that approximately 150 to 175 of
22 those stores generate negative EBITDA on a stand-alone
23 basis?

24 A Yeah, I think -- I think the number's 156.

25 Q One fifty-six, okay.

1 A I think.

2 Q And those stores have asset value though, right?

3 A Yes, they do.

4 Q Okay. And selling a store that generates negative
5 EBITDA, that could actually have a positive impact on your
6 plan, right?

7 A Depending on the purchase price, yes.

8 Q Okay. And those 156 stores out of the 425 that
9 generated negative EBITDA are candidates to be sold to
10 generate the 200 million a year that you need to generate?

11 A Yes.

12 Q Okay. Let's look at Tab 6, please. And behind Tab 6
13 is what's been marked as Joint Exhibit 56. Would you tell
14 me what this document is?

15 A This is the private supplement to the lender
16 presentation for the purposes of the ABL syndication
17 process.

18 Q And you attended a meeting at which this document was
19 presented to lenders?

20 A I did.

21 Q Okay. I'd like you to turn to Slide 8, please. And,
22 Mr. Kamalani, I turned to this version of the document merely
23 because it's more legible than the black and white document
24 we were looking at earlier. But you agree with me that what
25 was presented to the lenders in terms of ESL business plans,

1 it's the same thing that was provided to the Committee,
2 correct?

3 A I believe so. Again --

4 Q Okay.

5 A -- we -- we update this model regularly, so --

6 Q Understood.

7 A -- if -- if you checked them, I take your word for it.

8 Q Understood. And this is as it existed on January the
9 24th. So look at Page 8, and in particular I want to direct
10 you to Footnote 9. And what Footnote 9 says is, "Assumes
11 three stores with negative 4 Wall EBITDA sold per month in
12 2019, assumes no EBITDA benefit associated with sale of
13 stores." Did I read that correctly?

14 A You did.

15 Q And if you then go to where Exhibit -- I'm sorry,
16 Footnote 9 is -- appears on the chart, and it's rather
17 difficult to read, but you'll see there's -- if you go to
18 the right side under 2019, there's a \$200 million number
19 that appears both in '19, '20, and '21.

20 A Yes.

21 Q Okay. So is it in fact the case, Mr. Kamalani, that
22 under ESL's ownership, Sears is going to sell three stores
23 per month for each month of 2019?

24 A I -- I wish it were that simple, but it's not. I can't
25 tell you how many stores will sell next month or the month

1 after that, if -- if any.

2 Q Okay.

3 A But I will share with you that on the pipeline report,
4 which is probably the one that informs me the most, out of
5 the roughly 200-plus million of actionable properties that
6 could be sold in the next three to five months, it's maybe
7 20 to 25 properties of which I believe only three stores,
8 maybe four, are in the 425-store footprint.

9 Q Now, on -- if you go to Page 6 of this presentation,
10 Performance By Business Unit, up at the top of that page,
11 there's a line that shows store count for each year, and for
12 each year in the out years of the forecast for '19, '20, and
13 '21, it shows 425. But, in fact, it's not your projection
14 that there will 425 stores in each of those years, correct?

15 A Can you repeat the question for me?

16 Q Sure. So a footnote to your plan says you're closing
17 three a month. You've told me that's not right, okay. A
18 page earlier in the plan, it says we're not closing three
19 stores a month. We're going to have 425 stores every year
20 in '19, '20, and '21. As I understand your testimony,
21 you've got a bunch of real estate you're going to sell to
22 generate the 200 million, but you're not sure how many
23 stores that's going to involve, at least not in the first
24 year. So my question is it's not accurate, is it, that your
25 projected store count is going to be 425 for each of '19,

1 '20, and '21. Yes or no?

2 A Sitting here today, it is unlikely that it'll be 425 in
3 '19, '20, or '21. But I would add that this is a
4 projection. It is a forecast. If we come back three years
5 from now, my guess is every number on this page will be
6 different from the actuals.

7 Q Now, Mr. Kamlani, you've referred to -- and it's in the
8 business plan -- you talk about the overall ecosystem of
9 Sears assets. You know what I mean when I refer to that,
10 right?

11 A Yes. It's critically important.

12 Q Right. And in your belief is that the larger the
13 footprint for Sears, the more value that whole ecosystem
14 has, right?

15 A That's correct.

16 Q Now, going back to this footnote on Page 8 that talks
17 about the three stores a month, am I right that from the
18 perspective of your lenders, the ABL lenders that are
19 providing financing to the ESL-owners Sears, their focus is
20 not whether it's three stores or five stores a month. Their
21 focus is generating \$200 million a year in proceeds, right?

22 A That's correct.

23 Q And am I also right that whatever real estate ESL ends
24 up selling to satisfy this requirement to generate \$200
25 million a year of proceeds, you've done no analysis around

1 head-count reductions that might be associated with those
2 sales?

3 A No, because I don't know which stores will be sold and
4 also, I do not know when we sell a store depending on the
5 price, whether we'll have an opportunity to lease it back or
6 not. Again, to your ecosystem point you made earlier, we
7 would much prefer to lease back a store and sell it than to
8 sell the store and exit it.

9 Q Mr. Kamalani, the answer to my question, do you have a
10 projection of head count reduction is no, right?

11 A That's correct.

12 Q Okay. Now you also plan to close a number of
13 distribution centers, correct?

14 A Yes, I believe it's five conveyable distribution
15 centers are being reduced in the SG&A plan.

16 Q Okay. And do you know what the head count is
17 associated with those reductions?

18 A I -- I don't sitting here today, no.

19 Q Okay. Now you're aware, I take it, that as a part of
20 this Chapter 11 process, one of the things the Debtor had
21 considered was selling the Sears Home Services business as a
22 stand-alone business on its own, right?

23 A I am aware of that.

24 Q And you're aware that there was interest expressed from
25 buyers who might acquire that business as a growing concern?

1 A I was aware that that interest is predicated on a store
2 footprint surviving the transaction.

3 Q Okay. And how many employees are at Sears Home
4 Services, if you know?

5 A I -- I don't know the number exactly.

6 Q Order of magnitude 10,000 about right?

7 A Eight to ten thousand.

8 Q Okay. And Innovel, that's another business that the
9 Debtors were considering selling on a stand-alone basis,
10 correct?

11 A I believe they were trying to sell everything.

12 Q Right. And Innovel, in order of magnitude, roughly
13 2,000 employees at Innovel?

14 A That I wouldn't have. I -- I'm not as close to on the
15 employee number.

16 Q Okay. Let's look, if we could, please, behind Tab 5,
17 which is JX-55. And it's the lender presentation. Now, you
18 talk about the meeting at which this was presented. And Mr.
19 Riecker was at that meeting as well, right?

20 A He was.

21 Q Now let's go -- I apologize for flipping back and forth
22 -- back to JX-56, which is the supplement that's behind Tab
23 6

24 A So we're on Tab 6?

25 Q Tab 6. This is --

1 A What page?

2 Q We're going to go to the page I was on, Page 8.

3 A Okay.

4 Q Now in the top right-hand corner of the document, there
5 is a box that's labeled "Real Estate Debt." Do you see
6 that?

7 A I do.

8 Q And what it says is real estate debt 175 million.
9 Below that, appraised value 1.652 billion. And loan to
10 value, 10.6 percent. Do you see where I am?

11 A I see exactly where you are.

12 Q Okay. Thank you. So let's just see if we can get an
13 understanding of what this all means. So the real estate
14 debt, am I right that that's a reference to a \$175 million
15 real estate loan that will be funded at closing 50 percent
16 by ESL, 50 percent by Cyrus?

17 A Currently, that real estate loan will be funded 50
18 percent by Cyrus, the 20 million by Mr. Tisch --

19 Q Okay.

20 A -- and the remaining 67 and a half million dollars by
21 ESL.

22 Q Okay. And would I be correct in understanding, sir,
23 from this chart that the real estate that has an appraised
24 value that's referenced here of \$1.652 billion serves as
25 collateral or will serve as collateral for that loan?

1 A That's correct. That appraisal value is roughly 13, 14
2 months old, so that's correct.

3 Q Okay. Now, I want you to go to Tab 12, please. And
4 what is behind Tab 12 is -- what is behind Tab 12, sir, is a
5 commitment letter. It's marked as JX-180. And what I would
6 like you to do, if you could, I put just because it's hard
7 to follow the page numbers, I put a tab.

8 A I appreciate that. You made it easy for me.

9 Q Thank you.

10 A I found it.

11 Q Great. And what's behind that tab is a term sheet for
12 \$175 million real estate loan. Is that the same 175 --

13 UNIDENTIFIED SPEAKER: (Indiscernible)

14 (Pause)

15 BY MR. QURESHI:

16 Q And am I right, Mr. Kamalani, that the term sheet for
17 this \$175 million loan, this is the same 175 million loan
18 that is referred to in the prior document that I showed you?

19 A That's correct.

20 Q Okay. Now let's look for a minute at the interest rate
21 on this loan. So the term sheet says -- it's paragraph 6,
22 it's on the first page, "One month LIBOR plus 850 basis
23 points if paid in cash and one month LIBOR plus 1,050 basis
24 points if paid in kind and added to the principal."

25 Correct?

1 A Correct.

2 Q Okay. So would you disagree with me that one month
3 LIBOR today is roughly two and a half percent? Does that
4 sound right?

5 A That sounds right.

6 Q Okay. And so for this loan, if New Sears decides to
7 pay the interest on it in cash, the interest rate will be 11
8 percent roughly?

9 A That's right.

10 Q And if New Sears elects instead to add interest to the
11 principal amount of the loan, the rate will be 13 percent,
12 right?

13 A That's right.

14 Q And as we saw from the prior exhibit, the loan-to-value
15 based on the value of the collateral that secures this loan
16 is 10 percent, right?

17 A That's correct.

18 Q So you have \$175 million loan secured by over a billion
19 six in real estate. Mr. Kamalani, you're not suggesting, are
20 you, that an interest rate of somewhere between 11 and 13
21 percent represents a market rate of interest for that loan?

22 A No. The interest rate on this loan is a function of
23 where Cyrus is willing to participate in this loan.

24 Q Okay.

25 A We'd originally proposed a materially lower rate, which

1 I don't remember off the top of my head. We would -- it's a
2 market loan by the fact that that's where it got priced. Am
3 I happy with the terms? I'm very, very unhappy with the
4 terms.

5 Q Well, has Mr. Lampert decided whether New Sears is
6 going to pay this interest in cash or whether the interest
7 is going to PIK?

8 A That decision has not been made. It's a PIK -- PIK
9 toggle feature.

10 Q Okay.

11 A But I would point out that with 250 million of asset
12 sale proceeds a year, that I would expect this loan to be
13 gone and extinguished within the first 12 to 14, 15 months.

14 Q Okay. Now in this term sheet in the very first
15 paragraph, it says that the loan, the \$175 million loan that
16 we're talking about is secured by a property contained in
17 the Dove and Sparrow pools of collateral. Is that right?

18 A Yes.

19 Q It's consistent with your understanding?

20 A Yes.

21 Q Okay. And am I correct, Mr. Kamalani -- and again, I
22 can take you to the APA if it helps -- that as part of its
23 credit bid, ESL is credit bidding its Dove loan in the
24 amount of \$544 million?

25 A Correct.

1 Q Okay. And so of the total real estate value that
2 you're getting here, that New Sears is getting, of \$1.65
3 billion, 544 million of that value is attributable to the
4 properties that secure the Dove loan?

5 A Yes, that's 544 million of real dollars that we lent to
6 the company.

7 Q Okay. Again, this will go faster if you just answer my
8 questions.

9 A I -- I got it. I'm answering them.

10 Q Okay. And the balance of the \$1.65 billion in real
11 estate loans, in real estate value that secures this loan,
12 is therefore attributable to the Sparrow properties, is that
13 correct?

14 A The difference between the total minus the Dove would
15 equal Sparrow, yes.

16 Q Okay. And ESL is not credit bidding any of its Sparrow
17 debt as part of this transaction, is it?

18 A There's a mechanic there that I'm not familiar with,
19 but I believe you're correct.

20 Q Right. Because Sparrow's a non-debtor, right?

21 A Correct.

22 Q Okay. And so are you able to explain to me how NewCo
23 is paying for the billion dollars of Sparrow real estate
24 assets?

25 A Not in any accurate way.

1 Q Okay. Let's go back to Tab 6, please. And, again, I'm
2 going to focus on the repayment terms here. So do you have
3 Page 8 in front of you?

4 A I do.

5 Q Okay. If you see -- if you look at the line -- and,
6 again, apologies for the small font. It's a little
7 difficult to follow, but there's a line that says --

8 A It's -- it's my font. You don't apologize.

9 Q It says "Real estate sale proceeds" and then if you
10 look across for each month of 2019, it just shows the flat
11 \$17 million all the way across, right?

12 A It does.

13 Q And so what that represents, if I'm reading this
14 correctly, is that the \$200 million in real estate proceeds
15 for 2019, you just divided it up evenly over 12 months,
16 correct?

17 A That's correct.

18 Q Okay.

19 A Because I didn't have a view on --

20 Q Right.

21 A -- what was going to sell when.

22 Q And if you go down to Footnote 6, Footnote 6 tells us
23 what happens to that \$200 million, right? Footnote 6 says a
24 hundred percent of --

25 A It starts with "assumes," right?

1 Q Right. "Assumes 200 million of annual sale leaseback
2 transactions from '19 to '21. It does not account for
3 incremental associated lease expense." And then here's the
4 part I want to focus on, "Assumes 100 percent of proceeds
5 are used to pay down any of the ABL in the first four months
6 and then 80 percent of the proceeds used starting June of
7 2019." So let's just pause there.

8 So for the first four months after you close, you sell
9 a bunch of real estate, the first \$100 million, the ABL
10 lenders have said we have to get that. That goes to us,
11 right?

12 A So let's -- I just want to very, very clear on this
13 point. If NewCo draws -- draws on the revolver --

14 Q Yep.

15 A -- and we sell \$100 million of real estate, that \$100
16 million goes to repay the draw on the revolver, which is
17 still available to the company.

18 Q Right.

19 A It is not a permanent reduction in the revolver. It's
20 simply repaying the draw on the revolver.

21 Q And after that \$100 million is repaid to your ABL
22 lenders when we get past the four-month mark, then it's
23 80/20, right? Eighty percent of the proceeds go to pay down
24 the real estate loan that you and Cyrus and Mr. Tisch are
25 funding, and 20 percent goes to pay down the ABL lenders?

1 A Again, it's not paying down the ABL lenders. It is
2 repaying the draw on the ABL so that the cash is available
3 to the company to bolster its liquidity on its balance
4 sheet.

5 Q Now let's go one row down from where we were on the top
6 there, and there's a line that says, "Asset Sale Proceeds."
7 Do you see that?

8 A Bear -- bear with me for one moment.

9 Q Sure.

10 A I do see it.

11 Q Okay. And if you go over to 2019 and 2020 and 2021 on
12 the right side, there's \$150 million in that line item for
13 2019. Do you see that?

14 A I do.

15 Q And 130 for 2020, correct?

16 A Correct.

17 Q So am I right that what your business plan contemplates
18 is in addition to the \$200 million that we've been talking
19 about of annual real estate proceeds for 2019, there will be
20 additional asset sales that will generate an additional \$150
21 million, right?

22 A It is -- it's not necessarily just asset sales that's
23 in that number. If you'd like me to, I can elaborate.

24 Q Well, let's look at Footnote 7, which is the footnote
25 that goes along with that line. And what Footnote 7 says

1 is, "Assumes the sale of previously unencumbered assets
2 acquired in conjunction with the rollover of the junior DIP
3 of 100 million in June of '19, 100 million in June of '20,
4 and 30 million in December of 2020." And then it goes on
5 and says, "All proceeds assumed to pay down the junior DIP
6 rollover."

7 Is that an accurate statement of what you presented to
8 the lenders, sir?

9 A A more accurate statement of that footnote would have
10 been, Assumes the sale or collection of receivables
11 associated with et cetera, et cetera, et cetera. And the
12 reason I mention that is a major component of the
13 unencumbered collateral is 255 million of accounts
14 receivable. And as those accounts receivables are
15 collected, they can be used to pay down the junior DIP.

16 If we collect a hundred cents on the dollar, the junior
17 DIP falls from 350 million to 96 million dollars.

18 Q Mr. Kamalani, turn to Tab 8 in your binder, please. And
19 Tab 8 for the record is JX-178. And you will see on the
20 first page, sir, that this is an email that you've sent to
21 it looks like a couple of recipients at Bank of American,
22 Merrill Lynch on Sunday, February 3rd, so the night before
23 trial at 10:46 p.m. Is that right?

24 A Yes.

25 Q And subsequent to that, it was produced by your lawyers

1 at Cleary Gottlieb. And let's just look at the cover email.
2 And what you write to the recipients of this email, "We
3 wanted to provide you with the latest version of the model
4 that will be shared with all of the key parties this
5 evening." You go on from there, and then there are a number
6 of changes that you highlight. And I'd like to direct your
7 attention to the fourth one, which says, "RE Sale Proceeds."
8 Am I right that "RE" means Real Estate?

9 A Yes.

10 Q So "Real estate sale proceeds of an incremental 50
11 million in 2019 based on the latest pipeline report." Did
12 read that correctly?

13 A You did.

14 Q So am I right that Sunday night you're informing the
15 lenders that the \$200 million that we've been talking about
16 is now going to increase to 250?

17 A That's correct.

18 Q Okay. So --

19 A That's our best estimate as of today.

20 Q Right. And so that means that for 2019, the plan,
21 should this transaction close, is to sell a total of \$400
22 million in assets, right? So the 200 has become 250, and
23 then we still have the 150 that we talked about previously?

24 A Of which 255 million are accounts receivables.

25 Q Yeah. And you referenced again the pipeline report.

1 And so what is it about the pipeline report, Mr. Kamlani,
2 that caused ESL to decide that for 2019, it was going to
3 increase by another \$50 million the amount of assets that it
4 was going to sell?

5 A The pipeline report's divided into three sections. One
6 is a section that shows that buyers are ready to transact.
7 The second section is, you know, significant interest in --
8 in discussions. And then the third part of that was a list
9 of all the dark Dove and Sparrow stores of which I believe
10 there are close to 80 of them. And when I looked at the
11 value of those three components, I had confidence that in
12 Fiscal Year '19, we would be able to sell \$250 million with
13 of real estate, not 200.

14 Q Right. And so do I understand correctly from that
15 answer -- and I should add that your counsel has not
16 produced to us the pipeline report, so I've never seen it.
17 But with that important caveat, do I understand correctly
18 that the decision to sell more assets rather than less
19 assets in 2019 is not one forced upon you by the banks.
20 It's ESL's decision?

21 A Yes, that is -- that would be ESL's decision. That's
22 correct.

23 Q Okay. And, Mr. Kamlani, any possibility that that 250
24 number's going to be increased further?

25 A It could go up, it could go down.

1 Q Now we talked earlier about the first 100 million
2 dollars, if that is generated in the first, I think it's 90
3 days or 120 days. That has to go to pay down any draws
4 under the revolver, correct?

5 A That's correct.

6 Q Now, are you also aware -- and, again, just trying to
7 short-circuit things. We can look at the document if you'd
8 like -- that the ABL requires that if at the conclusion of
9 that 90-day period less than 100 million of any draws on the
10 revolver has been paid down, then ESL has to make a loan
11 equal to that amount?

12 A The company has to make a loan equal to that amount.

13 Q Okay.

14 A Whether it's ESL or another party, I don't know --

15 Q Okay.

16 A -- if we get it.

17 Q Got it. Let's go back to the business plan that you
18 presented, the one we first looked at. It's behind Tab 7.
19 And for the record, it's JX-139.

20 A You said Tab 7?

21 Q Tab 7. And I want to direct you to Slide 4 in this
22 document, which is the executive summary, and talk for a
23 minute about the ShopYourWay program. Now ShopYourWay, you
24 would agree with me, I take it, sir, is an area of focus for
25 Mr. Lampert?

1 A It does.

2 Q Okay. And in slide 4, the executive summary, you
3 write, "NewCo will leverage its state-of-the-art ShopYourWay
4 intelligence platform and integrate a retail platform to
5 deliver value and convenience to its members." Right?

6 A Yes.

7 Q Okay. Let's turn to Slide 9. And Slide 9 is called
8 "Integrating and Digitizing the Sears Platform" under the
9 heading ShopYourWay. Do you see that?

10 A I do.

11 Q Now these initiatives that are described on this page,
12 those are not new initiatives for ShopYourWay, are they?

13 A No, they're not.

14 Q In fact, sir, this slide that is in the January 2019
15 business plan is actually a slide that you yourself created
16 something like 12 to 18 months ago, right?

17 A I did. I worked on this slide with members of the
18 ShopYourWay management team for presentation at the time.

19 Q And I think what you -- the way you described it to me
20 at your deposition is that this slide is a reflection of the
21 evolution of what ShopYourWay will become over time, right?

22 A It is -- it is a continuum. That is correct.

23 Q Okay.

24 A We will never -- yes.

25 Q And it's the path the company's been on for some time?

1 A That's correct.

2 Q And you've not been able to acquire the number of
3 partners for the ShopYourWay program that you would have
4 liked, correct?

5 A I've had very high expectations. It has not yet met my
6 expectations.

7 Q Right. So historically, ShopYourWay as a whole has
8 missed your expectations, correct?

9 A It has not yet met my expectations. That's correct.

10 Q And ShopYourWay's membership has been on a steady
11 decline since 2013?

12 A Largely as a function of closing several hundred
13 stores, yes.

14 Q All right. Now for your go-forward business, ESL is
15 still looking to recruit a CEO, correct?

16 A That is correct.

17 Q And the lenders have a provision in their ABL that if I
18 understand it correctly, requires that if the CEO is not
19 unaffiliated with ESL, in other words, if Mr. Lampert were
20 to serve as CEO, if you were to serve as CEO, the lenders
21 can require a chief restructuring officer be put in place,
22 correct?

23 A That is correct.

24 Q So the only circumstance under which you end up with a
25 CEO that's not affiliated with ESL and that is not Mr.

1 Lampert is if you hire somebody completely independent?

2 A I think by definition that's accurate.

3 Q Okay. Now in addition to looking for a CEO, you're
4 also looking to fill a number of other senior positions at
5 the company, correct?

6 A That's correct.

7 Q Including senior leadership of retail operations?

8 A Yes.

9 Q Sears Auto Center?

10 A We're looking at complementing the management team in
11 material businesses across the company in order to make sure
12 that we execute significantly better going forward than we
13 have in the past.

14 Q You're looking for new senior leadership at retail
15 operations, auto center, Innoval Home Services, Kenmore and
16 Diehard, right?

17 A If you ask me to make a list today, I would put all
18 those on the list, yes.

19 Q Okay. And to your knowledge, no outside recruiting
20 firm has yet been hired to fill any of those positions?

21 A That's correct.

22 Q And Mr. Lampert has not yet told you whether he intends
23 to hire an outside recruiting firm to fill those positions,
24 correct?

25 A We certainly had a discussion about it. Quite frankly,

1 this has been a fast and furious process, and I don't
2 believe he or I have had the time to sit down and interview
3 the top recruiting person.

4 Q Let's switch gears again and talk about the option
5 process. Now you were involved in the negotiations that led
6 to the ESL bid being accepted, correct?

7 A Yes.

8 Q And ESL has created an entity, I think you called it
9 Transform Hold Co. Technically that's the legal entity
10 that's the buyer, right?

11 A Tranform Co or Hold Co, yes.

12 Q Okay. And am I right that the three equity
13 participants in that entity are ESL, Cyrus, and Mr. Tisch?

14 A I believe there's another minority group related to the
15 2L credit bid. And I don't know the mechanics, but there's
16 a company out there that's supposed to tell us who those
17 people are.

18 Q Okay. Now at some point in the negotiating process,
19 you were the lead negotiator, if you will, on the terms of
20 the asset purchase agreement on ESL's behalf, right?

21 A I -- I was the person on the ground with Mr. Lampert.
22 With respect to any material decision, I would have taken
23 his guidance.

24 Q Okay. And with respect to the release in particular,
25 that is the release that ESL is receiving as part of this

1 transaction, should it be approved, those negotiations were
2 handled directly by Mr. Lampert and not you, correct?

3 A That's correct.

4 Q And so you're not going to be able to provide the Court
5 with any insight into the negotiations that led to \$35
6 million being paid for the right to credit bid, correct?

7 A I would not be able to.

8 Q Okay. Now you were there at Weil Gotshal the night of
9 the auction, correct?

10 A I was. It was a four-day night, but I was there.

11 Q And did anybody from the Debtors ever tell you that as
12 part of the bidding process, there was a requirement that
13 ESL allocate its bid to the different assets that it was
14 acquiring?

15 A I -- I don't recall whether it was during that three-
16 to four-day process, but there definitely was requests from
17 the Debtor through this 45-ish-plus day process for us to
18 allocate our bid. And I believe we did send sources and
19 uses tables to the Debtor at some point that did provide an
20 allocation of our bid. Probably never to the level of
21 granularity that they wanted, but there -- there were
22 allocations that were provided.

23 Q Well, am I right, Mr. Kamlani, that ESL has not
24 allocated in any way the purchase price among the various
25 assets that it's acquiring?

1 A At this point in time, no, there's not an allocation.

2 Q Now a portion of ESL's overall credit bid here is on
3 account of the IP ground lease loan, correct?

4 A I'm sorry. Repeat that again. What paid the loan?

5 Q Sure. A portion of ESL's credit bid here is the debt
6 that ESL has on account of what's called the IP ground lease
7 loan. Is that right?

8 A That's correct.

9 Q And your understanding is that what you're credit
10 bidding for there are the leases that serve as collateral
11 for that loan, right?

12 A And all of the --

13 Q And the IP.

14 A -- intellectual property except for Kenmore and
15 Diehard.

16 Q And the amount outstanding under that loan is \$231
17 million, correct?

18 A That sounds right, yes.

19 Q Okay. And but what you have not done is any kind of
20 evaluation of what the assets are worth that secure that
21 loan, correct?

22 A We did a valuation at the time of making that loan. I
23 have not done a valuation since then.

24 Q Right. So to ask the question differently, you don't
25 know whether today the value of the leases and the IP that

1 secure that loan equal the \$231 million amount of that loan
2 that's being credit bid or not, right?

3 A I -- I do not other than I know what we're paying and
4 what we're getting for it. That's it.

5 Q And, likewise, sir, for the Dove loan that we talked
6 about, the 544 million, the appraised value that is referred
7 to in the schedule that I showed you earlier, that's the
8 most recent valuation information that ESL has on those
9 properties, is that right?

10 A Yes. And as I mentioned earlier, those appraisals are
11 roughly 12 to 14 months old.

12 Q Okay. Now, are you aware of whether in the course of
13 negotiations, the Debtors asked ESL to backstop its credit
14 bid with cash or with a letter of credit?

15 A They did.

16 Q And ESL refused to do that, right?

17 A We declined.

18 Q Okay. Now, you're also aware, I take it, Mr. Kamani,
19 that under the asset purchase agreement, the buyer has the
20 ability to designate certain leases for a period of time
21 that the buyer's then free to sell to third parties,
22 correct?

23 A Yes. We did purchase the designation rights.

24 Q Okay. And those designation rights exist for how long?

25 A I believe 60 days from closing.

1 Q And am I right that in the course of negotiations, the
2 Debtors sought to limit the number of properties for which
3 or over which ESL could exercise this designation right?

4 A The properties and the time frame.

5 Q Right.

6 A We were looking for a much longer time frame.

7 Q And ESL ended up with no limit on the properties,
8 right?

9 A But, unfortunately, very restricted limit on the time
10 frame, yes.

11 Q So yes, no limit on the properties. You can designate
12 whatever properties you want, and you have 60 days to do it,
13 right?

14 A That's what we paid for.

15 Q And this particular provision, the ability to designate
16 leases, then sell them to third parties was one that was of
17 particular importance to Mr. Lampert, correct?

18 A It was.

19 Q And it was one in which Mr. Lampert became the primary
20 negotiator, right, on ESL's behalf?

21 A That's a fair statement, yes.

22 Q Okay. Now you as part of your prior answer, Mr.
23 Kamlani, testified that ESL paid for the right to designate
24 any lease it wants in the company for 60 days and sell it to
25 a third party. What did ESL pay for that?

1 A At some point internally, we had a internal -- we -- we
2 had a number next to designation rights. I -- I don't
3 recall what it is, but it was not explicitly laid out in our
4 -- in any interim bid or final bid that I can recollect.
5 But there's no doubt in my mind that that is a part of our
6 purchase price.

7 Q Well, did the Debtor ever make a demand that ESL pay X
8 dollars for the right to designate any lease it wants and
9 sell that lease to a third party for 60 days?

10 A I believe there was a discussion at some point in time
11 around the value of designation rights. Again, as you
12 pointed out, I was not the lead on it, but I'm familiar with
13 the topic.

14 Q Okay. Now, Mr. Kamlani, as part of this overall
15 transaction, there are certain liabilities that ESL or the
16 buyer is going to assume, correct?

17 A That's correct.

18 Q And in the course of negotiations, am I right that the
19 company took the position, Sears, the Debtors took the
20 position that NewCo should assume of its liabilities, right?

21 A They did.

22 Q Okay. Now, let's turn to some of those in particular,
23 and let's start with accounts payable. So, as of the time I
24 took your deposition, your understanding is that NewCo was
25 assuming up to \$166 million in accounts payable, right?

1 A That's correct.

2 Q Okay. And those payables were to be identified in a
3 schedule to the asset purchase agreement. I think it's
4 Schedule 1.1G, right?

5 A I only learned that today.

6 Q Okay. So I gather then that you have not seen a
7 schedule that sets forth the AP that the 166 million in
8 accounts payable or any other amount of accounts payable
9 that the buyer is going to assume as part of this
10 transaction?

11 A We have seen accounts payable schedules twice. One was
12 probably a couple of weeks ago, and one might have been four
13 or five days ago. And the spirit of those schedules were,
14 here are the accounts payable at this point in time.

15 We would expect that based on running the business
16 in the ordinary course, when we close, the accounts payable
17 schedule that you inherit should largely look like the one
18 we're giving you today. That was the spirit of the
19 schedules that were... I'm not talking about Schedule C
20 asset purchase agreement.

21 In the ordinary course of business discussions and
22 negotiations, we were provided with a snapshot of AP by
23 vendor, so we had a sense of what it was AP looked like and
24 who the vendors were.

25 Q Mr. Kamalani, turn to Tab 2, please, in your book.

1 MR. QURESHI: And for the record, that's Joint
2 Exhibit 10.

3 Q This is the liquidity analysis that went along with the
4 ESL business plan, right?

5 A It was certainly one of them.

6 Q Okay. Turn, if you could, to Page 8 of the document.
7 And I get to blame you, I think, for being illegible,
8 because this is not the one you created, right?

9 A Yeah. I was looking for a date so I could get grounded
10 on which version this is. But I'll figure it out, I guess,
11 as we go along.

12 Q It's not dated. If it helps, it's the same one I
13 showed you at your deposition.

14 A Okay.

15 Q Page 8 of that document, again, it's difficult to read
16 --

17 A Yep.

18 Q -- but if you look on the left side, there's a line
19 item that says accounts payable. And then you go across the
20 top and you look at dates, and the first column says
21 closing, and the number underneath closing for accounts
22 payable is \$166 million. Am I reading that correctly?

23 A You are.

24 Q Okay. And your understanding was that certainly at the
25 time that you put this forecast together, \$166 million was a

1 good estimate and indeed you understood that that was the
2 cap of ESL's liability to take on accounts payable, correct?

3 A Correct.

4 Q Okay. And indeed, you told me at your deposition that
5 it was definitely a good estimate because contractually, you
6 were picking up \$166 million, so you described it to me as a
7 certainty, right?

8 A I believe what I described was that we had a
9 contractual obligation to pick up no more than \$166 million
10 of accounts payable, with inventory to be delivered
11 associated with that accounts payable post-close that was
12 not a part of the stock ledger as of the closing date.

13 Q Well, with the benefit of a transcript, I can tell you
14 exactly what you told me at your deposition.

15 A That would be helpful.

16 Q What you told me at your deposition, I asked you, "So
17 on Page 8" -- same document we're looking at -- "where
18 accounts payable at closing is listed at \$166 million, is
19 that a good estimate as far as you are aware? Answer: It's
20 definitely a good estimate because contractually, we're
21 picking up that \$166 million. So that's a certainty."

22 Did I ask you that question, and did you give that
23 answer? Yes or no?

24 A In that section of the deposition, yes.

25 Q Okay. Now let's go back to Tab 8, please. And behind

1 Tab 8, again, is JX-178. This is the email you sent to your
2 lenders on Sunday night around 11:00 PM. And if you look at
3 the cover email, you say, "Lastly, please take a look at
4 Footnote 10 on Slide 7 regarding the AP of \$166 million. As
5 you would expect, we are in discussions with the debtors on
6 this issue." Is that what you wrote?

7 A Yes, that's what I wrote.

8 Q Okay. So, let's go to Page 7 and let's look at
9 Footnote 10. And what you write in Footnote 10 is, "Debtors
10 have asserted that the ABA obligates buyer to assume up to
11 \$166 million in accounts payable with respect to..." And
12 then it goes on to describe a couple of buckets of that.

13 So, I gather from the way the footnote is worded,
14 but you can tell me if I have it wrong, that what you're
15 describing is the Debtors' assertion, and it's one with
16 which the buyer disagrees.

17 A That's correct. And I know you didn't reference it in
18 my deposition, but my understanding is also in that
19 deposition.

20 Q And Mr. Kamalani, that footnote then goes on to say,
21 "Buyer disputes this interpretation of the ABA and any
22 obligation to assume accounts payable that relate to any of
23 the \$1.553 billion of inventory acquired a closing, or any
24 such expenses incurred prior to closing." Does that
25 represent the buyer's position with respect to the

1 assumption of accounts payable today?

2 A That is my understanding of the business agreement.
3 That's my understanding of the contract.

4 Q Well, as you sit here on the stand today, is the buyer
5 agreeing with the Debtors that it will assume \$166 million
6 of accounts payable, or is the buyer continuing to dispute
7 that obligation?

8 A We continue to be in discussions to try and resolve
9 that issue.

10 Q It is presently unresolved?

11 A It is unresolved as I sit here today.

12 MR. QURESHI: Your Honor, can I have a minute?

13 THE COURT: Sure.

14 MR. QURESHI: Nothing further.

15 THE COURT: Okay. Anyone else wish to cross-
16 examine the witness? Nope? Okay. Redirect?

17 MR. BROMLEY: I'll be brief, Your Honor.

18 THE COURT: Okay.

19 REDIRECT EXAMINATION OF KUMAL KAMLANI

20 BY MR. BROMLEY:

21 Q Mr. Kamlani, Mr. Qureshi had asked you a few questions
22 about the company's business plan from December. Do you
23 recall those questions?

24 A Yes.

25 Q And in particular, there was a comparison that Mr.

1 Qureshi drew between a negative one percent growth that --
2 or negative growth that is built into the ESL business plan,
3 and a negative 2.4 percent growth that was -- or negative
4 growth built into the company's plan. Do you recall that?

5 A Yes, I do.

6 Q Now, in the company's plan in December, that was on a
7 footprint of 505 stores, correct?

8 A Five hundred and five stores, correct?

9 Q And the negative one percent that's built into the ESL
10 plan, what's the store footprint?

11 A That's 425 stores, the difference being the company
12 chose to put into going out of business sales 80 stores,
13 which is the difference between the 505 and the 425, and
14 those were the worst performing stores of the 525.

15 Q And so, with the removal of the worst performing stores
16 out of the 505, would you expect that to have any positive
17 impact on these numbers?

18 A Absolutely. It would have a mathematically positive
19 impact.

20 Q Now, Mr. Kamalani, the business plan that ESL put
21 together, you said that it was based on the company's
22 business plan, correct?

23 A That was the foundation for it, yes.

24 Q And I believe in one of Mr. Qureshi's questions, you
25 had described a process that you had went through in terms

1 of diligence and visiting Hoffman Estates do you recall
2 that?

3 A Yes.

4 Q Now, Mr. Kamlani, you were not permitted to give your
5 full explanation. I wonder if you could just tell us what
6 you were going to say in terms of that exercise?

7 A I'm sorry, could you say that again?

8 Q The exercise that you went through in the Hoffman
9 Estates. Could you please explain that?

10 A Yeah, we were at Hoffman Estates probably for three to
11 four full business days with our investment advisors from
12 Moelis. Citi sent two investment bankers. They were 14-
13 hour days and we met with all team members of the management
14 team who were responsible for critical business units that
15 would have a material impact on the plan in any way.

16 Q Now, Mr. Qureshi also asked you a number of questions
17 that went to the number of employees that are being
18 committed to be taken on as a result of this transaction.
19 Is there a contractual commitment to make offers of
20 employment to the employees that are currently employed by
21 Sears?

22 A There is, and the offer letters have been generated.
23 And I suspect that they're going to go out shortly, subject
24 to the transaction being approved and cost.

25 Q And that's for the entire 45,000 employees?

1 A The offer letters I just referred to, I think, are to
2 roughly the top 300 executives. I'm not yet familiar with
3 the communication to -- for the other 44,000-plus employees,
4 of which a significant portion are part-time. But there
5 will be a formal communication.

6 Q Now, with respect to the number of stores that ESL is
7 planning to maintain in the future, there was a number of
8 questions and back-and-forth with respect to stores that
9 might be closed and stores that might be open. In one of
10 your answers, you referred to dark stores. Could you please
11 explain what you mean by dark stores?

12 A Yeah. So, within the Dove & Sparrow portfolio, which I
13 think we spoke about with respect to the loan that it's
14 collateral for, I believe there are roughly 80 dark stores
15 that have substantial value. Obviously, since they're dark,
16 there are no employees associated with those stores. Those
17 stores don't generate any revenue. It's a cost to carry
18 those stores.

19 It would certainly be our strong preference to
20 monetize those dark stores for fair value as soon as
21 possible. They're not a part of the ecosystem in any way,
22 shape or form.

23 Q So, it's fair to say that closing a dark store doesn't
24 have any impact on employment numbers?

25 A Zero. In fact, it generates liquidity to continue to

1 invest in the business, grow the ecosystem, and employ more
2 people.

3 Q You also used the term lease-back. So, is it true that
4 ESL is considering sale-leasebacks of operating stores?

5 A We have. Consistent with the past, we've sold stores
6 on a sale-leaseback basis, and there have been some stores
7 where we did not sell on a sale-leaseback basis. Yes.

8 Q And what would the impact on employment be if a store
9 was sold and then leased back?

10 A There would be no impact on employment.

11 Q There was a couple of questions that Mr. Qureshi ask
12 you about opening new stores. Now, is there a particular
13 type of format of new stores that ESL is considering
14 opening?

15 A Yeah. We have a new concept store that's about 12,500
16 square feet. It's been in the marketplace for roughly two
17 years. So, it's not a test. It's tried and true. We're in
18 four markets, Hawaii, Colorado, Pennsylvania, and Pharr,
19 Texas. These are state-of-the-art, all-digital stores that
20 are a function of how you change your retail model to
21 survive in the environment that we rent.

22 Sears is a very, very large company. It's a
23 battleship. You can't turn it on a dime. Over time, what I
24 expect would happen is that as large 135,000 square foot box
25 real estate gets sold, because it is -- you cannot survive

1 in this retail market by running businesses anymore with
2 that sort of inefficient space. We will open up a multiple
3 of these new 12,500 square foot boxes that are far more
4 efficient.

5 What's particularly important is that as you drive
6 the type of volume for bulky goods through those new format
7 stores, they have a benefit to the Sears Home Services
8 business, which is responsible for repairing appliances that
9 are sold, and it's a boon to the Innovent business, which is
10 responsible for delivering and installing in customers'
11 homes.

12 So, I would actually expect, if we were to look
13 out two to three years from now, that this new company, if
14 we're successful -- it's a business; we're in the business
15 of taking risk -- if we're successful, we should be
16 employing more than 45,000 people by a wide margin. If
17 we're not successful, then we won't.

18 Q And with respect to the employees going forward, has
19 ESL made any determination with respect to severance
20 programs that you've put in place for employees on a go-
21 forward basis?

22 A We have. Associates or employees are the most
23 important factor in running any single business, in my mind.
24 When the petition date happened, the severance plan was
25 watered down. We wanted to send a very strong message to

1 our employees that they're critically valuable to success.

2 And so, we've committed to move the severance plan to as of
3 the closing date, to the extent that there is a closing,
4 back to the pre-petition severance plan.

5 Q So, just so I'm clear, the pre-petition severance plan
6 was more beneficial to employees than the post-petition?

7 A It was more beneficial to the employee. I just -- I
8 can't make this point enough. Jack Ma said focus on your
9 customers and then focus on your associates, and your
10 shareholders will be taken care of.

11 I think he got it backwards. If you focus on your
12 associates and they're happy, they'll take care of your
13 customers. And if your customers are taken care, then your
14 shareholders definitely have nothing to worry about.

15 It starts with the associates. Every day it's
16 about the associates. And at the end of the day, it's still
17 about the associates. The rest of the business then takes
18 care of itself.

19 Q Mr. Qureshi also asked you a couple of questions about
20 the ShopYourWay program.

21 A He did.

22 Q And I think he elicited testimony that you were not
23 happy -- have not been happy with ShopYourWay fulfilling
24 your expectations to date. Is that correct?

25 A Correct.

1 Q During the course of 2018, are you aware of any
2 improvements in the performance of Sears that were
3 attributable to the ShopYourWay program?

4 A Yes. The same store sales performance from February of
5 '18 leading right up until about mid-September was a
6 tremendous positive trajectory from roughly negative 15
7 percent. I think we actually -- it was actually positive at
8 some point in mid-September.

9 The management team had done a terrific job in
10 continuing to refine the ShopYourWay program as it relates
11 to providing ShopYourWay members with points back in their
12 pocket. Combined with promotional discounts and the right
13 marketing, it finally started to move the needle on same
14 store sales from that period of February to September 15th.

15 Very, very unfortunate we've had to go through
16 this petition process, which we lost that momentum during --
17 since October 15th, or slightly before then.

18 Q And do you have an expectation that that momentum can
19 be regained?

20 A Absolutely. There have been a number of companies that
21 have gone through a bankruptcy that are strong and healthy
22 today; the car manufacturers, just about every single
23 airline. There are companies that have gone through all
24 sorts of exogenous shocks in consumer confidence. Chipotle
25 comes to mind with their E. coli issue. That company is

1 doing well again today.

2 This company went through an exogenous shock.
3 This is a company that is based on consumer confidence and
4 trust to buy appliances in the home. We are going to come
5 out of the gate building consumer confidence and let the
6 world know that thanks for rooting for us, we survived, we
7 are part of the fabric of this country, and we hope you'll
8 continue to support us.

9 Q Now, Mr. Qureshi asked you a couple of questions about
10 the talent recruitment exercise. Just one question on this.
11 Is the existence of the publicity relating to the UCC's
12 opposition a problem in recruiting top talent at the moment?

13 A Yes. It's been very difficult to recruit top talent,
14 not only now but even pre-petition, given the lack of
15 visibility with respect to the runway of the company. The
16 discussions, you know, with talent on a pre-petition basis
17 was if you're able to figure out how to restructure the
18 company in court or out of court and there is certainty, you
19 know, then we'd like to have a conversation.

20 It's very hard to get a top CEO in their job to
21 commit to being the CEO of a company that might not even
22 exist. Could I hire a CEO last week? I could, but probably
23 not the one I'd want. So, the decision has been made to
24 wait for certainty so we can offer that certainty to the
25 market and hire the type of CEO that this company deserves

1 going forward.

2 Q So, there were a couple of questions that Mr. Qureshi
3 asked you about the allocation of value with respect to
4 particular credit bidding elements. And in particular,
5 there was a reference to the IP ground lease loan? Do you
6 remember that?

7 A Yes.

8 Q And you referenced the fact that you did do a valuation
9 with respect to the underlying assets at the time you did
10 the loan. Is that correct?

11 A That's correct.

12 Q And that was about a year ago? Is that right?

13 A It feels longer than that, but I know you might be
14 right. It feels longer than that.

15 Q And at the time that ESL participated in that loan, was
16 ESL confident that the value of the collateral exceeded the
17 amount being lent?

18 A We felt like we had adequate coverage, yes.

19 Q And is there anything that's happened in the time since
20 that would give you an indication that you don't have that
21 adequate coverage today?

22 A No.

23 Q Okay. I'll ask you the same questions with respect to
24 the Dove loans. Do you have that -- when you said that --
25 respect to those loans, there were appraisals done over 14

1 months ago, correct?

2 A Correct.

3 Q And at the time you made those loans, you felt you had
4 adequate collateral coverage? Is that right?

5 A Absolutely.

6 Q And is there any reason -- anything that's happened in
7 the interim that would give you a sense that you don't have
8 that coverage today?

9 A No, I don't believe there's been any material change or
10 shock in the real estate market that would shake my
11 confidence.

12 Q Okay. And with respect to this lease designation
13 issue, you mentioned the 60 days --

14 A Yes.

15 Q -- not having the right to designate leases within 60
16 days. During the negotiation, did ESL as the Debtors to
17 provide a longer period of time?

18 A I believe we may have asked for as long as six months.

19 Q And in those negotiations, you came down from six
20 months to 60 days?

21 A Yes. Again, Mr. Lampert was more front and center on
22 those negotiations than I am, but I am aware that it ended
23 up at 60 days.

24 Q Now, you recall, Mr. Kamalani, that ESL provided a bid
25 by the bid deadline of December 28th, correct?

1 A That's correct.

2 Q What is the difference in value between the bid that
3 went in on the 28th and the bid that is up for consideration
4 today?

5 A I believe it's \$800 million.

6 Q So, in that period of time, the bid value has gone up
7 by \$800 million?

8 A I believe so.

9 Q And that was a product of the negotiations that took
10 place between the 28th and the end of the auction?

11 A That's exactly -- yes.

12 Q Thank you.

13 MR. BROMLEY: No further questions, Your Honor.

14 THE COURT: Any re-cross?

15 MR. QURESHI: Just two very quick points.

16 RE-CROSS-EXAMINATION OF KUMAL KAMLANI

17 BY MR. QURESHI:

18 Q Mr. Kamlani, you agree, I take it, that there is no
19 contractual commitment on ESL's part to employ a certain
20 number or minimum number of employees for any period of
21 time?

22 A There's no contractual commitment beyond the closing
23 date to make offers. To the extent we were to reduce
24 employment the next day, we would be paying severance in
25 very, very large sums.

1 Q And you also agree with me, sir, that when it comes to
2 store closures that are likely to occur to generate the
3 hundreds of millions of dollars that we're talking about,
4 that it's a fair assumption that among the real estate that
5 will be sold to generate those proceeds will be lit stores,
6 currently operating stores?

7 A Certainly. What I don't know is whether or not we will
8 have them on a sale-leaseback basis so there's no adverse
9 impact to the employee base.

10 Q Okay.

11 A That I don't know.

12 MR. QURESHI: That's all I've got.

13 THE COURT: Okay. You can step down.

14 MR. KAMLANI: Thank you.

15 THE COURT: Okay. I think that's the end of the
16 Debtors' case, except for rebut -- you know, obviously,
17 cross-examining the Committee's witnesses.

18 MR. LENDER: Your Honor, just one housekeeping
19 matter. I think, just so the record's clear, again, we
20 would formally move in Mr. Meghji's declaration as his
21 direct examination. I believe you reserved on that earlier.
22 So, I just want to make sure that this is part of the
23 record.

24 THE COURT: Okay. Again, except as to the
25 validity of the real estate appraisals where there is

1 separate testimony, and which I'm admitting for purposes of
2 his understanding of the appraisals, I would admit it.

3 (Declaration of Mohsin Meghji Admitted Into Evidence)

4 THE COURT: Okay. I have the -- I read the
5 deposition designations also. So, when I say the end of the
6 company's case, that would include the company's
7 designations as part of the company's and the Committee's
8 designations.

9 So, why don't we turn to the Committee's
10 witnesses?

11 MR. QURESHI: Thank you, Your Honor. Again, for
12 the record, Abid Qureshi, of Akin Gump, for the Committee.
13 Our first witness is Mr. Saul Burian.

14 THE COURT: Okay. You can take a seat. So, would
15 raise your right hand, please? Do you swear or affirm to
16 tell the truth, the whole truth, and nothing but the truth,
17 so help you God?

18 MR. BURIAN: I hereby affirm.

19 THE COURT: Okay. And it's B-U-R-I-A-N?

20 MR. BURIAN: Correct.

21 THE COURT: Okay. And Mr. Burian, I have your
22 declaration here dated January 26, 2019. Sitting here
23 today, would this constitute your direct testimony?

24 MR. BURIAN: Yes.

25 THE COURT: Okay.

1 MR. QUERESHI: Your Honor, if I may, we did file
2 on the docket last night an update to Mr. Burian's
3 declaration, which has a cover page of February the 3rd.
4 There is no substantive change to it. It's just to cover a
5 declaration that says it's his direct testimony, and that's
6 all.

7 THE COURT: All right. Which we just went
8 through?

9 MR. QURESHI: Yes.

10 THE COURT: Okay. Very well. So, you can go
11 ahead on cross.

12 MR. FRIEDMANN: Thank you, Your Honor. Good
13 afternoon. Jared Friedmann, from Weil, Gotshal & Manges, on
14 behalf of the Debtors. If I may, Your Honor, we also have
15 exhibit books. If I could hand one -- permission to hand
16 one to you as well as to the witness?

17 THE COURT: Okay.

18 MR. FRIEDMANN: Thank you.

19 THE COURT: Thanks.

20 CROSS-EXAMINATION OF SAUL BURIAN

21 BY JARED FRIEDMANN:

22 Q Good afternoon, Mr. Burian.

23 A (indiscernible)

24 Q Mr. Burian, as the financial advisor to the UCC, there
25 came a time when you personally made the decision that a

1 liquidation was a better alternative to maximize value than
2 ESL did, correct?

3 A When you say personally, I think what I testified in my
4 deposition was there came a time when I wanted to make sure
5 we evaluated all alternatives, that I no longer was
6 comfortable spending significant amounts of money chasing
7 something that appeared to be destined to be a lower
8 recovery for unsecured recoveries than a going concern bid.

9 Q And the point at which you made that determination that
10 going after a potential ESL bid would be unlikely to succeed
11 and therefore a liquidation made more sense to you was right
12 after Debtors' financial advisor, M-III, presented their
13 first go forward plan, correct?

14 A So, to be clear, you mischaracterize what I said. But
15 generally, I believe that we always want to leave the
16 opportunity for ESL to make an emotional bid if they don't
17 want to overpay significantly and actually for unencumbered
18 assets and meet all three conditions that the company had
19 established. We will be more than happy to accept that bid.

20 However, what I testified to was there came a time
21 when liquidation was better than the more likely
22 alternative, and therefore, we encouraged the company not to
23 spend time and money specifically and exclusively that going
24 concern bid, because they're not the same thing.

25 Q And to clarify, that moment for you that decision was

1 made when the Debtors' financial advisor, M-III, presented
2 their first go forward business plan, correct?

3 A I believe that what I testified in my deposition was
4 that I had an open mind and we very much wanted to preserve
5 employment. And then the night after or the night of the
6 business plan, when I had a chance to really look at it
7 carefully, is when I became convinced that continuing to
8 spend money exclusively to pursue that alternative no longer
9 made sense.

10 Q And the business plan that M-III presented, the one
11 that you're thumbing through right now, which is Tab 1 in
12 the book, it was marked as -- admitted into evidence as
13 Joint Exhibit 131, that was the presentation that M-III gave
14 on or about November 12th, 2018, correct?

15 A This is the written portion of the presentation. I had
16 a lot more discussions that day about a number of topics
17 that influenced my decision.

18 Q But in terms of timing, November 12, 2018 is the day on
19 which you reviewed this business plan, you had those
20 discussions, and as you just referred to before, it was
21 later that evening that you had the opportunity to think
22 this through and came to that conclusion, correct?

23 A So, I forgot to check since our deposition what the
24 exact date was. You had said at the end of the deposition
25 that it was November 12th when that meeting and presentation

1 was, and I trust you in that regard.

2 Q Well, Mr. Burian, you don't have to trust me in that
3 regards insofar as the document in front of you, Joint
4 Exhibit 131, is dated November 12th, 2018, correct?

5 A Correct.

6 Q You don't have any reason to doubt that the November
7 12th, 2018 is in fact the correct date, right?

8 A I don't have any reason to doubt that the date is
9 wrong. I'm saying that we received many presentations. I
10 did not spend a lot of time working and comparing each one,
11 and I said I'm willing to believe -- trust you that this is
12 the one from the meeting we discussed in my deposition.

13 Q This November 12th presentation given by M-III on or
14 about November 12th, that was done before ESL had provided
15 its initial indicative bid, correct?

16 A If I remember correctly, the ESL bid was around
17 December 5th, the first bid, so that's --

18 Q So, this was at least a couple of weeks before that?

19 A Correct.

20 Q Okay. And November 12th was also a point where
21 Houlihan Loki had not yet prepared a wind down analysis,
22 correct?

23 A We had not formally prepared a wind down analysis.
24 That is correct.

25 Q The first time -- when Loki prepared a wind down

1 analysis, that was sometime between December 20th and
2 December 26th, correct?

3 A What I testified was it was the first time that
4 together with counsel and FTI we finalized one and
5 distributed it to our clients. That's what I testified to.
6 It is not the first time that we looked at wind down
7 analyses and thought about the issues.

8 Q Mr. Burian, do you remember at your -- you were deposed
9 in this case, it was only about a week ago, correct?

10 A It feels like longer.

11 Q For all of us, I promise. And you swore to tell the
12 truth that day, and you did in fact tell the truth, correct,
13 to the best of your ability?

14 A To the best of my -- I definitely, when I spoke at the
15 deposition, was telling the truth. And if I made a mistake,
16 it was inadvertent.

17 Q Let me read you the question and answer from that day
18 and tell me if you inadvertently misspoke then. I asked
19 you, "When did Houlihan Loki, whether it was you or your
20 team, first put together a wind down analysis in connection
21 with this case? Obviously, I don't mean outside of this
22 case." And your answer was, "So, the first one that we put
23 together was sometime between December 20th and 26th." Do
24 you recall that question and giving that answer?

25 A Not specifically, but it's consistent with what I've

1 said.

2 Q Okay.

3 A Today.

4 Q Okay. And therefore, that initial wind down analysis
5 that Houlihan Loki put together was more than a month after
6 the November 12th meeting with M-III regarding the first
7 presentation of their business plan, correct?

8 A It is correct that the final -- the then final version
9 of the wind down analysis that I distributed to the
10 Committee on the advice of counsel was roughly 30 days or
11 more after November 12th.

12 Q Was that the then final version, or was that, as you
13 testified at your deposition, the first one that you or your
14 team put together?

15 A It's the first version that we put together for
16 distribution to clients and outside parties. It's not the
17 first time we thought about the issues, considered the
18 issues, and compared estimates to potential alternatives.

19 Q Mr. Burian, as the financial advisor to the UCC, your
20 primary contacts with the Committee have been with its co-
21 chairs, correct?

22 A What I testified in my deposition, which is still true
23 today, that is not correct. We were a very active
24 Committee, and that I speak to many of them quite often. I
25 did say that there were two co-chairs and that the two co-

1 chairs had responsibility -- I don't know if we talked about
2 that at the deposition -- the two co-chairs -- there were
3 times when we spoke to the two co-chairs separate from the
4 committee. But I would not say to the exclusion of the
5 other Committee members.

6 Q Let me clarify before I go back to your deposition
7 again. The two co-chairs of the Committee were your primary
8 contacts on the Committee, correct, that you primarily spoke
9 to?

10 A Again, I'm not so sure that's true with at least one of
11 the co-chairs. I have spoken to other Committee members
12 just as often, both in terms of time of the conversations
13 and number of conversations. They are all co-chairs. They
14 do have some responsibility in setting agendas. And I
15 recollect at least one meeting with only the co-chairs.

16 But most of the interaction has been with the
17 whole Committee together. And there have been times when
18 I've had conversations with one Committee member or another.
19 It has not been primarily the co-chairs.

20 Q At your deposition, I asked, "Who do you communicate
21 with on the UCC? Answer: With a very active Committee. We
22 had two co-chairs, one of whom left the Committee. So,
23 primarily, we are spending a significant amount of time with
24 the two co-chairs together and individually." Do you recall
25 that question and answer from your deposition?

1 A I do. I also recall probably the next two pages of the
2 deposition, that continues to discuss with you our
3 interactions with the whole Committee, how this case was
4 substantially different than most cases I'm involved with in
5 which the Committee calls are long and involved and all the
6 Committee members participate.

7 Q Ron Tucker of Simon Properties is one of the co-chairs
8 on the Creditors' Committee, correct?

9 A He is now the only chair.

10 Q The other co-chair resigned, so now he's the only chair
11 of the Creditors' Committee?

12 A I believe that is true.

13 Q Okay. For a number of years prior to this bankruptcy,
14 Chairman Tucker has represented Simon Property Group as a
15 counterparty to both Sears and Mr. Lampert, correct?

16 A I testified, and the same is true today, that I'm not
17 sure and not aware of Mr. Tucker's role in a non-bankruptcy
18 context. I know that he has been active as a Committee
19 member representing Simon Properties, but there are many
20 people at Simon Properties who could be the primary person
21 to interact with ESL and Sears pre-bankruptcy.

22 Q Other than Mr. Tucker?

23 A In addition to Mr. Tucker.

24 Q Okay. And Chairman had the strong view that a
25 liquidation would be the better option for creditors such as

1 himself, correct?

2 A Yes.

3 Q In fact, Chairman Tucker has expressed to you that he
4 felt strongly that in light of Mr. Lampert's pre-petition
5 conduct, providing releases to Mr. Lampert would be
6 inappropriate, or should only be provided in exchange for
7 significant payments, correct?

8 A Correct.

9 Q But you're not sure whether Chairman Tucker's negative
10 views of Mr. Lampert were formed prior to becoming Chairman
11 of the Creditors' Committee or after he joined the
12 Creditors' Committee, correct?

13 A Correct.

14 Q Now, notwithstanding Chairman Tucker's role in the
15 Creditors' Committee, your understanding is that Simon
16 Properties would be permitted to buy Sears' assets in the
17 event of a liquidation, correct?

18 A Correct. We would hope that they would actively
19 participate in an auction process.

20 Q And in fact, Chairman Tucker has told you that Simon
21 Property Group intends to bid on Sears' assets in the event
22 of a liquidation, correct?

23 A I'm not sure I've had that direct conversation with Mr.
24 Tucker. I believe it's public record that Simon Properties,
25 with a consortium of landlords, did put in a bid. So, I

1 think it's public knowledge that they are a bidder and they
2 would like to bid. But I don't remember specifically if Mr.
3 Tucker told me that.

4 Q In fact, a liquidation for Sears would present
5 financial opportunities Simon Property Group, correct?

6 A Opportunities and risks.

7 Q And there are different types of creditors represented
8 by the unsecured Creditors' Committee, correct?

9 A Correct.

10 Q There are landlords like Simon Properties, which we've
11 just been discussing, correct?

12 A Correct.

13 Q There are also trade creditors?

14 A Correct.

15 Q Employees?

16 A To the extent they have a pre-petition unsecured claim,
17 correct.

18 Q And there are at least certain trade creditors, you
19 would agree, for whom a go forward sale to ESL would be a
20 better option than a liquidation, correct?

21 A I believe in my deposition I testified that there might
22 be a small group of trade creditors for whom the ESL
23 transaction would be better than what we call the
24 alternative sale process.

25 Q And you also would agree that there are at least

1 certain Sears employees that a go forward sale to ESL would
2 be better for than a liquidation, correct?

3 A Most likely, there would be a group of employees who
4 would be better off.

5 Q For example, a go forward sale would be better for
6 Sears employees at stores that continue to operate, correct?

7 A Generally. The question is for what period of time and
8 under what conditions, similar to the vendor question, which
9 is you have to think about what are the likely alternatives
10 and who you're talking about, and you can't just generalize.

11 As I told you in my deposition, if you're a vendor
12 with a very, very small claim, and therefore you don't care
13 that you're getting much less in value for that claim than
14 the claim is worth, and if your inventory turns over quickly
15 at high margin, so you don't care whether Sears survives a
16 long time or not, you could probably do significantly better
17 at that vendor. They would also be making money on new
18 Sears fast enough to make up what you're leaving on the
19 table. But we also talked --

20 Q Mr. Burian, I'm going to ask you to try to refrain your
21 responses to my questions and afterwards -- after I'm done
22 with my cross-examination, your attorneys can have an
23 opportunity to redirect you and ask you any clarification.
24 But in order to try to get through this quickly, I'll ask
25 you very direct questions. And if you could just answer

1 those, that would be great. Okay?

2 A I can try.

3 Q All right. I know, it's not always easy. Also, as you
4 explained in your deposition, you were not overly concerned
5 about the impact of a potential liquidation on Sears' rank
6 and file employees because you figured that those employees
7 who lose their jobs could just go out and find new jobs,
8 right?

9 A That's not what I said. If you'd like to save time,
10 instead of reading it to me, I could tell you what I said.

11 Q Oh, we'll help you out here.

12 MAN 1: (indiscernible)

13 MR. FRIEDMANN: Yeah, I'm sorry, I should be in
14 the page before.

15 Q This is on Page 165, Lines 3 through 17. You stated,
16 "When it comes to in-store employees, we don't really know.
17 I mean, ESL's track record is clear. And I think if you
18 just look at that track record, you could draw conclusions
19 as to whether store employees are better off or not. But
20 even taking him at his word that he will operate X number of
21 stores, those types of jobs do not disappear from the
22 economy and would be more likely than not available
23 elsewhere if those stores closed." Do you recall saying
24 that at your deposition?

25 A That's a partial quote from my deposition. It does not

1 provide --

2 Q Well, I'm not going to read your entire deposition
3 transcript. Do you recall making that statement in your
4 deposition?

5 A I'm sure no one in this room would like you to read all
6 400 pages, but I think that in the questions you're asking
7 me, it might be nice to provide the door to context and the
8 full answer to the question you asked.

9 Q Okay. There will be opportunity on redirect for your
10 counsel to clarify. My question is whether or not you
11 remember making that statement during your deposition?

12 A So, my answer is, assuming you read it correctly, I do
13 remember our conversation, and I remember that partially
14 represents the answer I provided to you.

15 Q And when you stated that those types of jobs do not
16 disappear from the economy and would be more likely than not
17 available elsewhere if those doors closed, what you were
18 suggesting was that those employees who might lose their
19 jobs could find a job elsewhere, correct?

20 A I was referring to the specific example that you
21 provided, and I was also talking generally. And if you
22 remember, we stratified employees into a number of buckets
23 and discussed each bucket in turn. If you don't want the
24 Judge to fully understand the answer, you can move on to
25 your next question.

1 Q In the analyses attached to your declaration where you
2 compare the value of the ESL bid to an orderly wind down,
3 you adopted the Debtors' assumptions for the value of each
4 of the non-real estate assets, correct?

5 A Wrong. To save time, most of them, obviously, with
6 respect to the antitrust litigation, we adopted a different
7 assumption, and then there were other methodological issues
8 I described in my report that were different. So, primarily
9 in an excess of caution and conservatism, we adopted the low
10 values that M-III used in their analysis.

11 Q And again, going to your deposition -- I'm on Page 335,
12 Line 20, through 336, Line 4 -- "If you look at Page 14 of
13 the dec. attached to my affidavit" -- and you can -- a copy
14 of your affidavit is included at Tab 4, I believe, before
15 you -- it says, "And if you look at Page 14 of the
16 dec. attached to my affidavit, we make it very clear for
17 purposes of the analyses, comparing the ESL bid, the
18 alternative sale process, we used the company's assumption
19 for their value of each and every one of the assets that are
20 listed on Exhibit 5." Correct?

21 A I believe I was referring to the page you received
22 before the deposition that had \$300-500 million of value
23 that we spent significant amount of time on, things like
24 Monark NOLs, the \$800 million FF&E, which magically has no
25 value, according to the company. And I said that we did not

1 include the values on that page in my report.

2 I don't remember if in that quote or later we
3 pointed out to the specific page I was referring to in my
4 report, which is Page 14. What I directed you to that we
5 made three changes on our Page 14, which is the question
6 you're asking me. Unencumbered real estate, which you
7 acknowledged; credit card tort, which I specifically
8 mentioned to make sure you didn't miss it; and then the
9 other encumbered assets, we left the same. The third change
10 was methodological.

11 Q Okay. So, the additional value that you ascribed an
12 orderly wind down as compared to the company's analyses,
13 that largely comes from the proceeds you assumed could be
14 derived from real estate assets, correct?

15 A It comes from the three buckets I just testified to.

16 Q With respect to the real estate assets, you didn't do
17 your own valuation, correct?

18 A I have not done an appraisal or valuation of each of
19 the properties.

20 Q One of the other UCC's paid experts, Mr. Greenspan, he
21 provided you with appraised values for Sears real estate
22 assets that he believed were within a range of value that
23 those assets could be sold for as part of the liquidation,
24 and that's what you rely on, correct?

25 A Correct. In parts of this report, we incorporated Mr.

1 Greenspan's conclusions. We did not adjust it for the \$80
2 million revision that was done at some point this week.

3 Q Okay. And so, because you took Mr. Greenspan's
4 analysis and values and incorporated your report, in the
5 event that Mr. Greenspan made any errors on the likely
6 recoveries from the sale of these real estate assets, those
7 errors necessarily would carry through to your report as
8 well, correct?

9 A Well, to the extent did I slavishly just take someone
10 else's numbers and put it into an Excel spreadsheet and
11 print a result, that might be true. But I would look at Mr.
12 Greenspan's conclusions. I would 5:23:28 I would continue
13 to use judgment about the issue and my experience.

14 If it's a small change, like the \$80 million
15 change that was made earlier this week, yeah, I think the
16 purpose is demonstrating that the ESL bid is deficient. I
17 think it's good enough. I think if you're actually asking
18 whether or not I was comfortable with an exact value or
19 dollar amount, I want to look at the changes more
20 specifically.

21 Q But to be clear, when you prepared your report and your
22 analyses, you simply adopted the valuations Mr. Greenspan
23 provided in his report and included them in your report?

24 A I agree that I adopted them. I disagree with the word
25 "simply."

1 Q Thank you.

2 MR. FRIEDMANN: No further questions, Your Honor.

3 THE COURT: Okay. Any redirect?

4 MR. QURESHI: Again, for the record, Abid Qureshi,
5 of Akin Gump.

6 REDIRECT EXAMINATION OF SAUL BURIAN

7 BY MR. QURESHI:

8 Q Mr. Burian, just two areas of inquiry. You were asked
9 a number of questions about the impact on employees, sir.
10 In putting together the analysis that you did comparing a
11 wind down scenario to the ESL bid, did you in fact consider
12 the impact on employees?

13 A It's not arithmetic in our report, Your Honor, but as a
14 financial advisor to the Committee who represents all
15 unsecured creditors, we thought a lot about vendors,
16 sharehold -- vendors, employees, and the other
17 constituencies.

18 Q Mr. Burian, were you in court earlier today for the
19 testimony of Mr. Meghji?

20 A I was.

21 Q And did you hear what Mr. Meghji testified to with
22 respect to Toys "R" Us?

23 A I did.

24 Q And were you involved in Toys "R" Us?

25 A I was very, very actively involved in Toys "R" Us.

1 Q And do you agree with what you heard from Mr. Meghji?

2 A No.

3 Q Please tell the court what you don't agree with --

4 A Mr. Meghji --

5 MR. FRIEDMANN: Objection, Your Honor. I object
6 to this testimony as outside the scope of the cross-
7 examination.

8 MR. QURESHI: Your Honor, I agree it's outside of
9 the scope of cross-examination. Obviously, in our written
10 direct, we weren't able to have Mr. Burian react to
11 testimony that preceded him. If we had live direct, this is
12 something that I would have addressed in his direct. It
13 goes to the same subject matter. It is squarely within his
14 declaration, which is the sale process. And it's a subject
15 area about which Mr. Burian has direct knowledge.

16 THE COURT: Well, that is what? Toys "R" Us
17 generally, or...?

18 MR. QURESHI: The sale process, specifically.

19 THE COURT: The sale process?

20 MR. QURESHI: There were comparisons made to the
21 process in Toys with the process here. The realization of -
22 -

23 THE COURT: Well, I understand the realization. I
24 don't understand the testi -- I don't think there was
25 testimony as to the process of the sale in Toys "R" Us.

1 MR. QURESHI: There was testimony, Your Honor,
2 that led -- that was in the direction of the recoveries that
3 were realized --

4 THE COURT: No, I understand that point.

5 MR. QURESHI: -- in Toys and --

6 THE COURT: I understand that point.

7 MR. QURESHI: And that was used by Mr. Meghji to
8 support --

9 THE COURT: No, you can ask him on that point.

10 Q So, with respect to that issue in particular, do you
11 agree with what you heard from Mr. Meghji around the
12 recoveries were realized in the sale process in Toys?

13 A I think Mr. Meghji --

14 THE COURT: Well, can you be a little more
15 specific? You're focusing on the percentage recovery on
16 sales of leases, right?

17 MR. QURESHI: Yes.

18 Q But before I get to that, please describe for the Court
19 what your role was in Toys, and specifically with respect to
20 the sale process.

21 A Sure. I mean, Your Honor, the way Toys "R" Us worked
22 is there were a number of entities, a number of boards of
23 directors, HoldCo, U.S. operating company, II PropCo,
24 foreign entities, and then another blizzard of entities that
25 are not relevant.

1 I represented the primary at risk stitch you and
2 see, called the B3 and B4 lenders. They were the junior
3 secured lenders and the primary parties in interest,
4 realizing the proceeds of these sales across all the
5 entities, as prepared to, for instance, Mr. Meghji, who is a
6 director of the HoldCo entity, which had, frankly, a much
7 smaller portfolio of real estate than were at the PropCo,
8 the operating companies, and the entities for which I was
9 most concerned about.

10 Q Mr. Burian, what did you observe, given your role in
11 the constituency that you were advising, about recovery
12 percentages that were realized in connection with the sale
13 of the lease interests in Toys "R" Us?

14 A So, first of all, it's important to understand that the
15 words "recovered percentages" are only meaningful when
16 you're comparing them to something that is apples to apples.
17 So that you have an appraisal done shortly before the event,
18 and then you get a recovery percentage, you can say, hey,
19 look at this; that percentage is greater than the appraisal
20 from before. Something that is three years before, then you
21 could say that appraisal may not be as meaningful.

22 Mr. Meghji was drawing a comparison in saying that
23 he was looking at the values of real estate and in some
24 respects, 50 percent discounts, in part because it is Toys
25 "R" Us experience. And there's nothing in Toys "R" Us that

1 can support that level of conclusion. And that is for the
2 following reasons:

3 Number 1, is it is true that the leases of the
4 parent company where Mr. Meghji was did not sell that well,
5 so it was compared to whatever appraisals were done. But
6 those stores and the tenure when the leases were signed,
7 completely different than Toys "R" Us. Toys "R" Us is --
8 then Sears.

9 Toys "R" Us, Your Honor, is 40,000 square feet,
10 relatively recent, 10-15 years, with escalators that made
11 the rents close to market, and without significant
12 noneconomic rights that would impair and impede third-party
13 development of the surrounding land and shopping centers.

14 Whereas the Sears locations, even those that are
15 technically leased, are much closer to being owned, in the
16 sense of these are anchor stores of 140,000 feet. They
17 actually control, in most parts, the entryway to these
18 centers for which development cannot be done in or around
19 the center without the consent of the third parties/

20 One of the reasons why we hope that people like
21 Simon Properties will bid, and bid often, in order to buy
22 back their ownership rights from the estate.

23 So, first and foremost, the properties are nothing
24 alike. Secondly, quoting lease information has very little
25 bearing on the fact that we have over 150-something

1 industrial assets, warehouse, distribution centers, and the
2 like, fee-owned in Sears. And those property sold for 110-
3 120 percent of dark value appraisals in Toys "R" Us.

4 In this process, where we're relying on this
5 complex timeframe for indications of interest that may or
6 may not be dealt with for properties that may or may not be
7 sold, we got -- we didn't even get bids or indications of
8 interest for 50 percent of the fee-owned properties that are
9 the most valuable properties with respect to industrial
10 assets in the Internet world of retail.

11 As a matter of fact, we got bids for almost -- I
12 think we got bids for less than just over 50 percent of the
13 fee-owned properties generally. And as a matter of fact,
14 with respect to indications of interest, according to the
15 JLL report that was shared with us, they only managed to
16 find two expressions of interest with respect to other and
17 industrial assets.

18 So, there it was a robust sale process that
19 concluded that fee-owned properties with a lot of money,
20 zero bids. How many bids did we get in Toys "R" Us? Not a
21 single fee-owned property wasn't sold in that process. And
22 most of them, we had multiple bids.

23 I'm not telling you I was thrilled with all the
24 conclusions. But I'm telling you that in a half-decent-run
25 process, you're not going to have 50 percent of fee-owned

1 properties ignore long-term leases, ignoring property rights
2 embedded in long-term leases, ignoring ground leases.

3 Right? We're talking about the simple gravy of the process.

4 So, when I hear Mr. Meghji talk about Toys "R" Us
5 and use it as support for any conclusion of value in Sears,
6 I think Mr. Meghji is making a mistake in focusing on the
7 leases at the Inc. level of Toys "R" Us and not the bigger
8 picture.

9 Q Thank you, Mr. Burian.

10 THE COURT: I had a couple of questions on Toys
11 "R" Us. Was there a going concern competitive process, or
12 did it which right to liquidation?

13 MR. BURIAN: No, Your Honor. And that's a very
14 good question. In that case, my client spent \$350 million
15 chasing a wild goose chase down a going concern, because the
16 Debtors' financial advisor, who was Lazard in that
17 situation, told us, A, there would be a buyer for domestic
18 and, B, don't worry, the investment is worth it, because the
19 foreign assets will be worth over \$1 billion, which would
20 accrue for the U.S. business.

21 We spent \$350 million pursuing that opportunity.
22 March 14th of last year, the Debtor told us, unfortunately,
23 there were no going concern bids. And then later this year,
24 the Debtor confirmed the foreign asset, the Asian business,
25 as a going concern at roughly \$750 million, paying the Inc.

1 entity that Mr. Meghji is a director of, zero.

2 THE COURT: So, you were affected by that process?
3 That affected --

4 MR. BURIAN: What I'm saying --

5 THE COURT: -- your analysis of this case?

6 MR. BURIAN: I'm just saying --

7 THE COURT: Just yes or no?

8 MR. BURIAN: The answer is yes.

9 THE COURT: All right. I have another question
10 for you. What happened to the employees in Toys "R" Us?

11 MR. BURIAN: It depends which ones and where. I
12 will tell you that a significant number of the properties in
13 Toys "R" Us were relet or purchased. Last I checked, when
14 you walk through a mall, many clients that have gone out of
15 business, that space is refilled with profitable businesses
16 and there are people working behind the cashier, and people
17 working selling products in those stores.

18 I don't remember -- I didn't expect to be asked --
19 how many of the Toys "R" Us locations were redone. But
20 those for which we received significant amounts of money
21 were certainly purchased in order to reopen.

22 I can tell you, if you look at the general
23 statistics of labor and you see where jobs are moving in
24 warehouses, distribution centers, trucking --

25 THE COURT: I'm talking about stores.

1 MR. BURIAN: -- and delivering. Sorry?

2 THE COURT: I'm talking about stores.

3 MR. BURIAN: In the Sears stores, there's a
4 significant number of people that work in stockrooms. They
5 do some Internet fulfillment through those stores. But I
6 can't tell you, Your Honor, that every single person in a
7 Sears sales associate position will be reemployed in a Sears
8 in a liquidation.

9 THE COURT: Well, of course not.

10 MR. BURIAN: Right.

11 THE COURT: All right, I think I've
12 heard enough of this. But you worry about that a lot in
13 your analysis, right? You've thought about it.

14 MR. BURIAN: We did three things with respect to
15 store employees. One, we focused on the recovery with
16 respect to the PBGC and payments on our retirement funds.
17 As you know, there's a view that this is going to result in
18 significantly lower value for the PBGC. Number two --

19 THE COURT: In their capacity as a secured
20 creditor of the entity that's not a Debtor.

21 MR. BURIAN: And also in the capacity as one of
22 the largest unsecured creditors. Number two --

23 THE COURT: It's lower because they say they have
24 a lower recovery on (indiscernible) secured creditor of a
25 non-debtor entity.

1 MR. BURIAN: I think if you ask the question, Your
2 Honor --

3 THE COURT: Well, I will. Let's go ahead. Point
4 two.

5 MR. BURIAN: Point two, we have suggested a
6 process where we liberate Innovent, Monark, and ship parts
7 direct and the repair maintenance business, where thousands
8 of employees work, where they can move to healthy platforms
9 and work in the business that is not controlled by the same
10 management team and the same owners that have run Sears so
11 far.

12 THE COURT: Okay, and part three?

13 MR. BURIAN: Sorry?

14 THE COURT: And part three?

15 MR. BURIAN: And then part three was the actual
16 in-store -- well, there actually are four, because there are
17 people in Hoffman Estates that unfortunately, we believe
18 that in other liquidations, middle management white-collar
19 workers in support functions for large retail businesses do
20 have a very hard time finding other employment. Not clear
21 to me, Your Honor, that that should be the single most
22 important motivating factor in determining whether to
23 receive less as an unsecured creditor of the estate. But
24 there's no question, as I testified in my deposition, that
25 there's going to be a significant number of those employees

1 for whom finding alternative employment will be difficult.

2 With respect to part-time employees and the store-
3 level sales associates, the sales and economic activity is
4 highly unlikely to go away. And, yes, it will be difficult
5 on those families, and yes, there will be a period of time
6 when there will be uncertainty, but generally -- but
7 generally -- sales associate positions remain relatively
8 even.

9 THE COURT: You haven't analyzed how many of those
10 people live week-to-week on their salary, right? Or you
11 don't care?

12 MR. BURIAN: Or what?

13 THE COURT: Or you don't care, one or the other?

14 MR. BURIAN: I do care, and as I said throughout -
15 -

16 THE COURT: Have you analyzed it?

17 MR. BURIAN: I can't hear you, Your Honor.

18 THE COURT: Have you analyzed it?

19 MR. BURIAN: Your Honor, my capacity as a
20 financial advisor to the unsecured creditors' committee, I
21 don't think I was ever asked by my client to analyze how
22 many post-petition employees are living well or less well at
23 Sears. I will tell you that I was asked that -- not that
24 long ago, there were 300,000 employees. Now there's 45,000.
25 Under the company's business plan, there's going to be many,

1 many, many less thousands of employees by a factor -- by a
2 significant factor. So I don't know if we're talking about
3 5,000 or 25,000 employees that are going to be adversely
4 affected by this outcome, because we have not been given
5 insight into the business plan. But if I were running the
6 process, we would do everything we could to maximize
7 employment in the operating businesses at Sears, both
8 because it's the right thing to do, and to minimize claims.

9 THE COURT: Okay, you can go ahead.

10 MAN 1: I have nothing further, Your Honor.

11 THE COURT: Okay. Do you have anything further?

12 MAN 2: No, Your Honor. Thank you.

13 THE COURT: Okay.

14 MAN 1: Your Honor, I would just offer Mr.
15 Burian's declaration of evidence.

16 THE COURT: That's fine. It's admitted. Okay,
17 Matthew Diaz.

18 MR. SORKIN: Yes, Your Honor, the Creditors'
19 Committee offers Matthew Diaz. His declaration was
20 submitted. There was an updated declaration that was
21 submitted with the Court last evening that simply updates
22 the numbers that we've been provided in connection with the
23 administrative solvency tracking reports that have come over
24 the next -- excuse me, over the last week.

25 THE COURT: Right, I saw that. Okay, let me just

1 -- would you raise your right hand, please?

2 MR. DIAZ: Yeah.

3 THE COURT: No, you can sit down; just raise your
4 right hand. Do you swear or affirm to tell the truth, the
5 whole truth, and nothing but the truth, so help you God?

6 MR. DIAZ: I swear to tell the truth.

7 THE COURT: Okay. And it's D-I-A-Z.

8 MR. DIAZ: A-Z, yes, sir.

9 THE COURT: Okay. All right, so you can go ahead
10 with -- well, let me ask -- I'm sorry. Mr. Diaz, I have
11 your declaration from January 26, 2019. I got another one,
12 which is an update in light of information you received from
13 the Debtors. I got that last night. Sitting here where you
14 are today, would those two declarations constitute your
15 direct testimony?

16 MR. DIAZ: That's right.

17 THE COURT: Okay.

18 MR. LENDER: Your Honor, if I may approach, I have
19 a binder with his declarations in it, a couple of exhibits
20 that I may or may not use.

21 THE COURT: Okay.

22 MR. LENDER: Thank you. May I proceed, Your
23 Honor?

24 THE COURT: Yes.

25 CROSS-EXAMINATION OF MATTHEW DIAZ

1 BY MR. LENDER:

2 Q Mr. Diaz, you prepared a declaration in support of the
3 UCC's objections in this case, right?

4 A I've prepared two declarations.

5 Q Last night, you actually sent us your supplemental
6 declaration, correct?

7 A That's correct.

8 Q Now, one of the things you were tasked to do in this
9 case was to try to assess whether a sale of the company to
10 ESL will leave the Debtors administratively insolvent,
11 correct?

12 A That's correct.

13 Q And the supplemental declaration that you provided to
14 us last night addresses that issue, correct?

15 A That is correct.

16 Q And what -- if you can, I put inside your binder, in
17 the flap, a copy of the supplemental Diaz declaration, and
18 if you could just turn to Page 7 in your supplemental
19 declaration, and I wanted to ask you to confirm that this is
20 your latest calculation of the potential administrative
21 shortfall.

22 THE COURT: I think it's 6, right?

23 MR. LENDER: I'm sorry, Page 6. Thank you, Page
24 6. I'll try that again, so the record's clear.

25 Q If you turn to Page 6, this is your latest calculation

1 of the potential administrative shortfall, correct?

2 A That is my latest calculation. That is correct.

3 Q And what you've concluded, based on taking account of
4 certain potential upsides and certain downsides that you've
5 identified, that there could be a potential shortfall of
6 \$218 million, correct?

7 A \$218 million, plus some unquantified downsides as well,
8 too.

9 Q It actually says plus or minus some unidentified
10 downsides, right?

11 A Yeah.

12 Q Or upsides.

13 A That's right.

14 Q Now, one of the deductions you made is \$112 million for
15 KCD royalties, correct?

16 A That is in the calculation.

17 Q And is that -- is it your understanding that that is an
18 administrative claim?

19 A It is my understanding that it may be an administrative
20 claim.

21 Q You also deducted the \$166 million accounts payable
22 amount that was part of the topic of discussion over the
23 last two days, correct?

24 A That is in my analysis, correct.

25 Q So, to be clear, if the \$166 million payment is ESL's

1 responsibility and the Debtors resolve the \$112 million KCD
2 issue, then under your own calculation, there would be no
3 administrative shortfall, correct?

4 A That is not correct.

5 Q Well, Mr. Diaz, you have calculated the potential
6 administrative shortfall at \$218 million, plus or minus,
7 right?

8 A Two hundred and eighteen, plus or minus TBD, correct.

9 Q And \$112 million for KCD and \$166 for accounts payable,
10 I add those two together, and you deducted both of those,
11 that's more than \$218 million, right?

12 A So, Counselor, a couple things to keep in mind, just to
13 make sure we have --

14 Q Can you first start with answering my question, and
15 then you can explain? You deducted both the \$112 million
16 number and the \$166 million numbers, and those two
17 deductions combined is more than the \$218 million number
18 that you put down on your sheet as the potential
19 administrative shortfall, correct?

20 A So, do you want me to do arithmetic for you, or --

21 THE COURT: It's 60.

22 MR. LENDER: Okay. Thank you, Your Honor. I
23 would have thought that somebody from FTI could do the math,
24 but I appreciate you doing it for us.

25 Q Now, you also understand that your client, the UCC

1 believes that there are valuable claims that have been
2 preserved that can be brought against Mr. Lambert and
3 yourself, correct?

4 A There are claims that are being preserved, correct.

5 Q Your understanding is that your client believes those
6 are valuable claims, correct?

7 A They are potentially valuable claims, correct.

8 Q And if you client is correct, recoveries on those
9 claims also could help fill any administrative shortfall,
10 correct?

11 A If those claims are successful, those could be
12 additional proceeds, correct.

13 Q Now, Mr. Diaz, you also did an assessment of liquidity
14 for the Debtors going concern business, correct?

15 A That is correct.

16 Q And if you could turn to your original declaration,
17 which is Tab 1 in your binder, and I believe -- and I want
18 you to confirm -- that Exhibit A to your original
19 declaration, that's your assessment of the Debtors'
20 liquidity as a going concern business, correct? Or NewCo's
21 -- let me try that again. Exhibit A is your assessment of
22 NewCo's liquidity analysis as a going concern business,
23 correct?

24 A Sir, what Exhibit A is, it is ESL's liquidity analysis,
25 adjusted for two things. One, what a called an error in my

1 report, and two, certain adjustments that were provided to
2 me by Mr. Kniffen with respect to their operating
3 assumptions.

4 Q Great, let's go through that, because I was going to go
5 through the methodology, but let me just go through it
6 correctly. You first started with ESL's projected liquidity
7 analysis for the going concern business for 2019, correct?

8 A That is for fiscal year of 2019.

9 Q And ESL's projected liquidity analysis showed that
10 NewCo had sufficient liquidity for all of fiscal year 2019,
11 correct?

12 A ESL shows varying levels of liquidity for 2019.

13 Q But every year, there's positive liquidity at the end
14 of each month, correct?

15 A In the unadjusted analysis, there was positive
16 liquidity shown on their report.

17 Q Right, and what you did was you made adjustments to
18 certain items in ESL's projected liquidity analysis,
19 correct?

20 A That's right.

21 Q For example, you just mentioned one of the things you
22 adjusted for was that accounts payable number, that \$166
23 million, right?

24 A That's correct.

25 Q And to be clear, deducting just that \$166 million

1 number would still leave NewCo with sufficient liquidity for
2 every month of fiscal year 2019, correct?

3 A If one only made that adjustment, there would be
4 liquidity that was above zero.

5 Q So the next thing you did was you made a series of
6 other adjustments to the ESL liquidity analysis, based on
7 certain assumptions that you received from another UCC
8 expert, Mr. Kniffen, correct?

9 A The Category 2 assumptions were provided to me by Mr.
10 Kniffen.

11 Q And you relied on Mr. Kniffen's opinion for that work,
12 right?

13 A That's right.

14 Q Now, essentially, UCC hired another expert, Mr.
15 Kniffen, who says that in his view, he disagrees with
16 certain of the assumptions contained in the ESL liquidity
17 analysis, right?

18 A Mr. Kniffen's stated -- Mr. Kniffen disagreed and
19 thought that -- disagreed with certain of the assumptions
20 that were in the ESL business plan.

21 Q And he provided you different assumptions to make with
22 regard to things like same-source -- same-store sales, gross
23 margin, and days payable outstanding, correct?

24 A That's correct.

25 Q And you just accepted those opinions and ran them

1 through your calculation, right?

2 A I took his more reasonable assumptions and ran them
3 through the calculation, that's right.

4 Q Well, actually, you said they were reasonable, but to
5 be clear, you did no independent verification of Mr.
6 Kniffen's opinions, correct?

7 A I took his assumptions, correct.

8 Q You had absolutely no basis to agree or disagree with
9 any of Mr. Kniffen's opinions contained in his report that
10 you relied upon, right?

11 A I took Mr. Kniffen's assumptions to create this
12 analysis, correct.

13 Q In fact, you've never even met Mr. Kniffen, right?

14 A I've not met Mr. Kniffen.

15 Q You've never even spoken to him, correct?

16 A I've spoken with members of his team many times.

17 Q You never specifically spoke with Mr. Kniffen, correct?

18 A I am -- I've spoken to member -- I don't believe I
19 have, no. Correct.

20 Q What you did is you just took certain of Mr. Kniffen's
21 --

22 THE COURT: No, we already -- he said yes.

23 MR. LENDER: Got it.

24 Q Now, Mr. Diaz, looking at your Exhibit A to your
25 report, even after making all of the adjustments you made,

1 you calculated that NewCo would have adequate liquidity and
2 not violate any debt covenant until October of 2019,
3 correct?

4 A I show that -- so in my footnote -- I'm sorry, can you
5 repeat the question, please?

6 Q Looking at the Exhibit A, which is your calculation,
7 even after making all of the adjustments you made, you
8 calculated that NewCo would have adequate liquidity and not
9 violate its debt covenant until October of 2019, correct?

10 A I show that in October of 2019, the debt covenant would
11 be breached starting October of 2019. I don't make an
12 assessment on liquidity prior to that.

13 Q The analysis you performed for the UCC shows a positive
14 liquidity number through September of 2019, right?

15 A That's right.

16 Q Now, one of the assumptions you made and changed in the
17 ESL liquidity analysis, based on the assumption -- the input
18 you got from Mr. Kniffen, was to same-store sales, correct?

19 A That's right.

20 Q The ESL model assumed that same-store sales would go
21 down by negative 1 percent in fiscal year 2019, right?

22 A The ESL business plan showed negative 1 percent,
23 correct.

24 Q And you have no idea what methodology ESL used to come
25 up with that number, correct?

1 A Correct. As I said before, I relied on Mr. Kniffen for
2 that assumption -- for that revised assumption.

3 Q You didn't test or critique ESL's analysis with coming
4 up with their same-store sales projection for 2019, correct?

5 A Mr. Kniffen tested and critiqued those assumptions; I
6 did not.

7 Q Now, looking at Exhibit A, you calculated the impact of
8 changing same-store sales from negative 1 to negative 5.5
9 percent in October of 2018 as a \$54 million hit on
10 liquidity, right?

11 A That's right.

12 Q So, to be clear, if the ESL liquidity analysis is
13 correct, and Mr. Kniffen's assumption is wrong, most of the
14 liquidity shortfall for October of 2019 would go away,
15 right?

16 A So if the ESL analysis was correct, there would be no
17 change. It will still be minus 1 percent.

18 Q Okay, thank you. The next thing you changed was gross
19 margin adjustment, right?

20 A That's right.

21 Q And the ESL liquidity analysis assume a margin
22 improvement of 1.25 percent in fiscal year 2019, right?

23 A That's right.

24 Q And Mr. Kniffen assumed it would be flat.

25 A That's right.

1 Q And, again, you did no independent analysis of the
2 gross margin adjustment proposed by Mr. Kniffen, right?

3 A As discussed before, for all three of these
4 adjustments, I relied on Mr. Kniffen's critique of that
5 analysis.

6 Q And for October 2019 again, you calculated the impact
7 of gross margin adjustments as if it was flat instead of
8 1.25 percent, and that was a \$48 million hit on liquidity,
9 right?

10 A For the month of October, that was the impact of that
11 change.

12 Q Okay, you've been sitting here during the trial for the
13 two days of the trial?

14 A I have.

15 Q And you're aware that the company's -- the company's
16 going forward business plan actually assumes a gross margin
17 of up to 2.5 to 3 percent in fiscal year 2019, right?

18 A As I said, I relied on Mr. Kniffen to critique this
19 line.

20 Q Sorry, my question is -- was a different question.
21 You're aware that the company's going forward business plan
22 actually assumes that gross margin would be up 2.5 to 3
23 percent in fiscal year 2019, right?

24 A Yeah, I don't -- I don't exactly recall on that exact
25 number.

1 Q And just how your math works, if the company turns out
2 to be right instead of ESL, not only would you not deduct
3 \$48 million, like you did in October 2019, but in fact you
4 would add another \$48 million of liquidity, right?

5 A If the company's gross margin is -- if the actual gross
6 margin is favorable to the ESL estimated gross margin, then
7 that would be a positive adjustment. That's how the
8 arithmetic would work, correct.

9 Q Thank you. Now the third adjustment you made was for
10 days payable outstanding, or what we've referred to in this
11 case as DPO, right?

12 A That's right.

13 Q And days payable outstanding essentially is the number
14 of days suppliers give you to pay when you purchase
15 merchandise from them, right?

16 A Days payable outstanding is a mathematical calculation
17 that calculates how much liabilities you have in relation
18 to, you know, the number of days of your cost of goods sold.

19 Q Well, what it's trying to measure is the number of days
20 that suppliers are giving you to pay when you purchase
21 merchandise from them, right?

22 A Suppliers is a broad term, but it's, you know, your --
23 you know, the components of your cost of goods sold, the
24 credit -- the vendors who provide you, you know, your goods
25 that help to, you know, make the products or sell the

1 products.

2 Q The idea is, if instead of -- if you have to pay in 30
3 days instead of 20 days, that's 10 more days where you have
4 cash where you can use it for other things, right? That's
5 kind of the idea.

6 A Yeah, so it's vendor financing, and if you have 30
7 days, that's better than 20 days, which is better than 10
8 days. That's right -- for the company.

9 Q And days payable outstanding, it has nothing to do with
10 payments of things like rent, right?

11 A It's a simple calculation of what are the number of
12 days that are outstanding. And what I did for this analysis
13 was I took the 22-day assumption that Mr. Kniffen provided
14 to me, and the Debtors provided -- not the Debtors. The ESL
15 business plan assumed in some cases 32 days, so I ratcheted
16 it -- that down, you know, by 10 days. And that was the
17 extent of the analysis that I did.

18 Q I'll try my question again. Based on your
19 understanding of what days payable outstanding is, that has
20 nothing to do with the payment of rent, does it?

21 A Yeah, no, like I said, I would defer to Mr. Kniffen's
22 analysis with respect to this component of the calculation.

23 Q How about common area of maintenance? The way you
24 understand what days payable outstanding is about, could it
25 have anything to do with things like rent or common area of

1 maintenance? Does that have anything to do with buying
2 merchandise from vendors, to your understanding as a
3 business man, FTI, anything?

4 A Yeah, no, I'll repeat my answer. I defer to Mr.
5 Kniffen's calculation with respect to this.

6 Q Okay. Now the ESL liquidity analysis assumed that,
7 starting in July of 2019, NewCo days payable outstanding
8 would get to 32 days and then remain constant there at the
9 end of the year, right?

10 A That is correct. Starting in July this year, it would
11 go from 20 days in June to 32 days in July. That's right.

12 Q And what Mr. Kniffen assumed was that it would only get
13 to 22 days by July of 2009, and that's what you used for
14 your calculation, right?

15 A That's exactly right.

16 Q And, like with all the other adjustments you made, you
17 did no independent analysis of what the correct days payable
18 outstanding number should be, right?

19 A I relied on his critique for that assumption, correct.

20 Q Now, looking back at your Exhibit A, your analysis of
21 liquidity, that 10-day adjustment that you made to days
22 payable outstanding had a significant impact on the
23 liquidity in your calculations, right?

24 A So, month of October, it had a \$100 million impact, for
25 example. Or, month of July, which was the month we were

1 just talking about, it was \$113 million impact.

2 Q The impact was between \$113 million and \$201 million,
3 depending on the month, correct?

4 A That was my arithmetic, correct.

5 Q Mr. Diaz, if you had not made that one adjustment to
6 days payable outstanding, your calculation would have shown
7 positive liquidity for all of fiscal year 2019 and no
8 covenant default, correct?

9 A So, had we not made -- had I not made that adjustment,
10 for example, the month of October, instead of it being
11 negative \$66, you would add back \$102, which would have
12 been, give or take, positive \$40. In the month of November,
13 instead of it being negative \$151, it would have been -- I'm
14 sorry, instead of it being negative \$118, it would have been
15 positive \$33, you know, et cetera.

16 Q So, to be clear, if you had not made just that one
17 adjustment to days payable outstanding, based on the very
18 calculation you did, NewCo would have adequate liquidity
19 every single month of fiscal year 2019 and would trigger no
20 covenant default, right?

21 A So, let me just take that into two pieces. So, one,
22 you said adequate liquidity. I'm not making a judgment on
23 adequate liquidity. Two, the arithmetic here would show
24 that liquidity would be in above the adjusted excess
25 liquidity. But you need to continue this into February and

1 March of 2020, which would be an ongoing calculation that
2 you need to do to see how those months would be impacted.

3 Q The only calculation that you did on behalf of the UCC
4 was for fiscal year 2019, right?

5 A What I did here was through January 2020.

6 Q You have -- this is only that, right?

7 A Correct.

8 Q Okay. Now your understanding is how Mr. Kniffen
9 calculated the DPO numbers that he provided to you, those 22
10 days, was he used a formula to derive his DPO numbers,
11 correct?

12 A He did a calculation of historical DPO for the company.
13 He also looked at the DPOs as well, in connection when Kmart
14 emerged from bankruptcy, you know, a number of years ago,
15 you know, as laid out in his expert report.

16 MR. LENDER: Your Honor, may I approach?

17 THE COURT: Okay.

18 Q Let me show you a copy of Mr. Kniffen's report --

19 A Thank you.

20 Q -- and ask you to take a look, if you could, at the
21 formula that Mr. Kniffen used to calculate days payable
22 outstanding. Now, first of all, let's be clear: you've seen
23 this report before, correct?

24 A I've seen Mr. Kniffen's report.

25 Q And if we turn to Exhibit 22, which is probably close

1 to the back -- let me know when you're there.

2 A I am there.

3 Q And if you look at Footnote number 1, this tells you
4 how Mr. Kniffen came up with this DPO numbers, correct?

5 A I'm sorry, I'm at Exhibit -- I'm on Page 54, Exhibit
6 22.

7 Q Comparison, actual and planned, Sears days payable
8 outstanding. Do you see that?

9 A I do.

10 THE COURT: Why don't you show it to him, just to
11 make sure?

12 MR. LENDER: Thank you, yes.

13 MR. DIAZ: Is there a footnote on here?

14 Q No, I'm sorry, Exhibit 22 in the back.

15 A Oh, sorry. There's two Exhibit 22s, I guess.

16 Q Oh, yeah, it's the Exhibit 22 in the back. Let me know
17 when you're there.

18 A Yes.

19 Q Great. And Exhibit 22, just for the record, is
20 comparison of actual and planned Sears days payable
21 outstanding, DPO. And you see that Mr. Kniffen dropped a
22 footnote that explained how he calculated the DPO numbers
23 that he then provided to you, that you used in your
24 adjustments to the liquidity analysis. Do you see that?

25 A I see Footnote number 1 on Exhibit 22.

1 Q And what Footnote number 1 says is that DPO is
2 calculated as merchandise payable divided by cost of sales,
3 buying, and occupancy, times the days in fiscal period. Do
4 you see that?

5 A I see that.

6 Q And are you aware that Mr. Kniffen explained at his
7 deposition that cost of occupancy is rents, common area
8 maintenance, things like that? And, Your Honor, for the
9 record, that's Page 309-2 to 309-6 of Mr. Kniffen's
10 deposition. Were you aware of that?

11 A I'll just -- I'll restate my previous testimony. With
12 respect to this assumption, I used the 22 days, which was an
13 assumption provided to him by me -- sorry, an assumption
14 provided by him to me. In terms of the specific
15 calculation, I did not get into that calculation.

16 Q Mr. Diaz, you know how fractions work, correct?

17 A Absolutely.

18 Q If you make the denominator bigger, it reduces the
19 value, correct?

20 A If you make denominator bigger, that would reduce the
21 value.

22 Q And here, Mr. Kniffen put the cost of rent and common
23 area maintenance into the denominator, correct?

24 A Can you repeat the question, please?

25 Q Here, Mr. Kniffen put the cost of rent and common area

1 maintenance into the denominator, correct?

2 A So, the denominator, the footnote says occupancy.

3 Q And as I said, Mr. Kniffen explained he would know what
4 is cost of occupancy, and he said that's rents and common
5 area maintenance, right?

6 A I think Mr. Kniffen's deposition, testimony and
7 footnotes speak for themselves.

8 Q Okay. Has anyone brought it to your attention that Mr.
9 Meghji included in his declaration the actual terms provided
10 by vendors, and that he said that the mean DPO for Sears in
11 2018 was 42 days, and the median was 34 days?

12 A Yeah, I'm not sure that -- I mean, I think that
13 contradicts what is in the ESL liquidity analysis, which
14 says there's a 22-day pre-petition day terms for DPOs.

15 Q Do you have any idea, sitting here today, what period
16 of time that statement covers, whether that's just right
17 before the filing or the whole of 2018?

18 A Yeah, I mean, I refer you to this Exhibit 1, which
19 shows in Q3, the DPO was four. In Q2 for 2018, it was 18.
20 In Q1, it was 20.

21 Q But, Mr. Diaz, we already explained these numbers are
22 based on Mr. Kniffen's calculation, right?

23 A Correct.

24 Q Now, Mr. Diaz, the sole basis for you using 22 days for
25 DPO starting in July 2019, rather than 32 days, was Mr.

1 Kniffen, right?

2 A Correct.

3 Q So if the Court concludes that Mr. Kniffen's use of a
4 formula to derive DPO that adjusts DPO for payment of rent
5 and common area maintenance should be rejected, the support
6 for you using 22 days as opposed to 32 days for DPO starting
7 in July 2019 goes away, correct?

8 A So, going back to my previous testimony, if 22 days is
9 the correct number, which is what Mr. Kniffen provided to
10 me, that's the number I've put into this analysis. If a
11 different number, whether it's higher or lower, that would
12 change my analysis, and it's the arithmetic on that.

13 Q Let me ask you one more thing, Mr. Diaz, or one more
14 quick set of questions. Would you concede that for each of
15 these assumptions, it's possible that either ESL could turn
16 out to be right, Mr. Kniffen could turn out to be right, or
17 it's possible it could come in somewhere between the two?

18 A I think Your Honor will decide which assumptions he
19 thinks is reasonable and he will decide what he thinks is
20 right.

21 Q And, Mr. Diaz, based on your calculations, if it turns
22 out that for all these adjustments you made, it actually
23 kind of comes down the middle, then for every single month,
24 there would be positive liquidity and no covenant default,
25 correct?

1 A I haven't done that calculation.

2 Q Trust me, that's the way the math works. Thank you,
3 Your Honor. No further questions.

4 THE COURT: Okay, redirect?

5 MR. SERKIN: Thank you, Your Honor. Again, Joseph
6 Serkin, Akin Gump.

7 REDIRECT EXAMINATION OF MATTHEW DIAZ

8 BY MR. SERKIN:

9 Q Mr. Diaz, if you could look back at Page 6 of your
10 supplemental declaration.

11 A Okay.

12 Q And Mr. Lender asked you to assume that if \$112, the
13 accrued KCD royalties, and \$166, the accounts payable
14 liabilities, were taken out of this analysis, that you would
15 have a \$60 million positive liquidity, so positive in terms
16 of administrative solvency. Is that what this chart shows?

17 A No, it does not. And I'm sure you're referring to the
18 chart on Page 7, for the record. What --

19 Q On the supplement. So, just so we're on the same page,
20 we are on the supplemental declaration, and if I need to
21 hand that to you, I'm happy to. So it's Page 6 of the
22 supplemental declaration.

23 A Yes. Yes, I apologize, Page 6 of the supplemental
24 declaration. No. No, that assumption -- the arithmetic
25 that he mentioned is the way the math works, as Your Honor

1 pointed out. But on Page 6, let me discuss a few things
2 here. You know, one is we heard earlier today, by the
3 Debtors' own math, the company shows that they're
4 administratively insolvent by \$35 million, which was as of
5 February 3rd. I got another version last night, you know,
6 very late, which shows \$42 million. But for all sets and
7 purposes, you know, the number's, you know, is the same.

8 In my previous declaration, there were some errors and
9 omissions to the Debtors' analysis. Some of them, they've
10 corrected; some of them, they have not corrected. For
11 example, in the previous analysis, they did not include
12 accrued payroll. That's something that I put in my
13 declaration. That's something they subsequently
14 (indiscernible).

15 On this Page 6, the big critique that I have in the
16 Debtors' administrative solvency analysis is that includes
17 \$125 million of "upsides." Maybe they'll happen, maybe they
18 won't. I give information on that in my report. But
19 there's substantial risk of whether that will happen, and a
20 lot of these things have to happen in the next couple days,
21 i.e. before Friday, assuming that's the close day.

22 There's also a tremendous amount of downsides in the
23 administrative solvency analysis that the Debtors have not
24 addressed in their calculation. Counselor identified two
25 shortfalls, talked about KCD, talked about accounts payable.

1 I agree, those are two very large shortfalls. There's also
2 many others. You know, 506(c), there's been no
3 administrative bar date. There's hundreds of claims that
4 have been filed, which may substantially --

5 THE COURT: You don't mean 506(c).

6 A 503(b)(9), thank you. Excuse me. There are hundreds
7 of claims that have been filed that may impact that
8 503(b)(9) calculation that the Debtors have. We heard from
9 Mr. Meghji that they've not reconciled that. That gets me
10 very nervous.

11 There are employee benefits under the account -- under
12 the APA. Employee benefits, as of the closing date, stick
13 with the sellers in terms of the accrued cost. I do not see
14 that addressed in the Debtors analysis. Hopefully, you
15 know, if this does get approved, then, you know, there's a
16 big closing date. If the closing date happens on Friday,
17 then, you know, that's the numbers, but if that extends out,
18 that can extend additional cost.

19 There are costs --

20 THE COURT: I'm sorry, the employee benefits are
21 actually in this chart. I thought you were just talking
22 about things that weren't in the chart.

23 MR. DIAZ: I'm sorry, let me make that clearer.
24 What I was indicating was in the Debtors administrative
25 solvency analysis that they prepared and provided to the

1 Unsecured Creditors' Committee, it only shows upsides, Your
2 Honor. It doesn't show these downsides that --

3 THE COURT: Maybe I wasn't clear, or maybe I just
4 didn't understand the point you were making. I thought what
5 you were saying is that the chart here that shows \$218
6 million shortfall takes into account certain items,
7 including liabilities regarding employee benefits,
8 warranties, accounts payable, the \$166. If you add all
9 those up, there's the -- and then you subtract the two
10 items, you have the \$60 million. But then I thought what
11 you were saying is there are other risks. And all I was
12 saying is, I think the risks on the employee benefits are
13 already in your chart. You've already -- you've already
14 factored that risk in.

15 MR. DIAZ: So, you're correct. I've put an
16 estimated number for that. Company has self-insured benefit
17 plans. That number could be higher, that number could be
18 lower. It's a plus-or-minus number. That's the reason why
19 I pointed that out.

20 THE COURT: Okay.

21 MR. DIAZ: There's also, you know, in the EPA, the
22 seller is responsible for the protection agreement
23 liabilities until a Bermuda regulatory authority -- you
24 know, I put in \$30 million. That assumes that those notes
25 get transferred in a month. If that extends out much longer

1 than a month, there will be additional costs that the
2 sellers will be responsible for.

3 THE COURT: I'm not sure I quite followed that.

4 MR. DIAZ: So, I'll say it a little bit slower. I
5 apologize.

6 THE COURT: Okay.

7 MR. DIAZ: So, in the EPA, ESL has agreed to
8 assume certain protection agreements associated with, you
9 know, protection agreements that customers have on various
10 products.

11 THE COURT: Right.

12 MR. DIAZ: And, however, that assumption does not
13 happen until these KCD notes are transferred to ESL, and
14 that requires regulatory authority, or Bermuda authority.
15 And until that transfer happens, the seller is responsible
16 for the cost of servicing these protection agreements. The
17 estimated cost per month of these is \$30 million. So, you
18 know, if you get that resolved in a month, \$30 million is
19 right. That's what I have on this sheet of paper. If it
20 goes on forever, you know, that number keeps clicking away,
21 because the seller is responsible for those protection
22 agreement costs until that happens, as I understand that
23 agreement.

24 THE COURT: Okay.

25 MR. DIAZ: There's also some other things. I had

1 mentioned the declaration. But the point being is, is that
2 you can't just do the simple arithmetic. There's other
3 unquantified downsides that one needs to take into account
4 that risk -- that increase the risk of administrative
5 insolvency.

6 Q And, Mr. Diaz, if we could just look at Section 4 on
7 Page 6, the potential mitigating items identified by
8 Debtors, the first category, upsides that need to be
9 realized prior to close.

10 A Yeah, no, I would note, too, that the arithmetic isn't
11 that simple. On my Page 6 chart, I show for purposes of
12 this that the full \$125 million of upsides that the Debtors
13 identified are actually realized. But as I identify in
14 Paragraph 5 of my supplemental declaration on Page 4, you
15 know, there's a lot of risk to this. You know, there's
16 receivables that, you know, as we understand the EPA aren't
17 going to go to the buyer, so that essentially means you have
18 a couple days to collect this \$20 million receivables, you
19 know, which is a lot. If they can do that, that's great,
20 but that's a lot of work to do.

21 In terms of the excess inventory, I think you heard
22 from the questioning on Mr. Meghji some of our concerns on
23 that, that one, you have to identify what that excess
24 inventory is. You know, two, you have to get ESL's consent
25 to move that excess inventory. Three, you have to move that

1 to your stores.

2 THE COURT: Can I just interrupt you? Is that the
3 basis for your \$115 million deduction? I'm just trying to
4 figure out --

5 MR. DIAZ: Yeah, I was just being conservative.
6 On Page 6, I show --

7 THE COURT: So you have deducted.

8 MR. DIAZ: I deducted the full amount, and the
9 point being is that there's a risk that the Debtors don't
10 get those upsides, is the point.

11 THE COURT: So you're not counting those upsides.

12 MR. DIAZ: On Page 6, I counted those upsides.
13 But the reason why the arithmetic isn't so simple is that
14 there's a good chance, I believe, that they don't realize
15 those upsides.

16 THE COURT: Okay.

17 Q And just to clarify, Mr. Diaz, in terms of the
18 question, if you look at Page 6, are you intending to
19 reflect a specific number, a determination of administrative
20 solvency?

21 A I am not. I am showing a calculation of, based on the
22 downsides that I've seen, based on the upsides that I've
23 seen, that there's a very big shortfall, and it could be
24 substantially higher.

25 Q Thank you, Mr. Diaz. No further questions.

1 THE COURT: Okay, any redirect?

2 MR. LENDER: No, Your Honor. Thank you.

3 THE COURT: Okay, you can step down.

4 MR. DIAZ: Great, thank you.

5 MR. SERKIN: Your Honor, just for the record, we
6 would move in Mr. Diaz's supplemental declaration that also
7 contains the original --

8 THE COURT: It's his direct testimony. It's fine.
9 All right, so that leaves Mr. Greenspan?

10 MR. CHAPMAN: Your Honor, for the record, Dean
11 Chapman of Akin Gump on behalf of the Creditors' Committee.
12 Your Honor, we have submitted a declaration and an extra
13 report for Ron Greenspan, Senior Managing Director at FTI.
14 Mr. Greenspan leads FTI's corporate finance and
15 restructuring practice in the western United States and co-
16 leads FTI's global real estate solutions practice. A
17 summary of Mr. Greenspan's qualifications is contained --

18 THE COURT: I read it.

19 MR. CHAPMAN: You've read it? Fantastic. And at
20 this time, Your Honor, we would move to qualify Mr.
21 Greenspan as an expert in the field of real estate
22 valuation.

23 THE COURT: Okay, is there any objection to that
24 expert qualification?

25 MAN 3: No, Your Honor.

1 THE COURT: Okay. Would you raise your right
2 hand, please? Do you swear or affirm to tell the truth, the
3 whole truth, and nothing but the truth, so help you God?

4 MR. GREENSPAN: I do, Your Honor.

5 THE COURT: And it's G-R-E-E-N-S-P-A-N?

6 MR. GREENSPAN: Correct.

7 THE COURT: Okay. Now, Mr. Greenspan, I have your
8 declaration, which is -- well, I have one from January 26th
9 and an update from -- or it's really not an update. It just
10 states that it's his direct testimony, from February 2nd.
11 So, sitting here today, would that still constitute your
12 direct testimony?

13 MR. GREENSPAN: It does, Your Honor, but I do need
14 to make one correction.

15 THE COURT: Okay.

16 MR. GREENSPAN: Subsequent to my report and my
17 deposition, Mr. Welch, the lead of the JLL Appraisal
18 Practice, gave his deposition. You will have noted that in
19 Footnote 7, I noted that it appeared to me there was a
20 modeling in JLL's reports, in their appraisals. Because I
21 relied on those appraisals, we corrected what we believed
22 was a modeling error, and my report was based on those
23 corrected appraisals. Mr. Welch couldn't explain what
24 appeared to be the error, either. They took a break, he
25 came back in and acknowledged that the reports are not

1 particularly clear, but he gave an explanation why he
2 believes it is not a modeling error. I've accepted that
3 explanation. My numerical conclusions and my opinions are
4 unchanged by un-correcting the correction. However, I would
5 withdraw Footnote number 7, and also, the numbers on Table
6 10 are no longer precisely accurate. The recoveries on the
7 unencumbered real estate would go down between \$50 and \$70
8 million between the low and the high, and the totality of
9 recoveries would go down between \$70 and \$90 million.

10 MAN 4: Can I have those repeated one more time?
11 I just did not write them down.

12 MR. GREENSPAN: It's \$50 to \$70 million on the
13 unencumbered assets, and the totality, which is the bottom
14 line number, could go down \$70 to \$90 million, from low to
15 high.

16 THE COURT: So I don't understand, when you say
17 your numerical includes are unchanged, how do those two
18 things reconcile with each other?

19 MR. GREENSPAN: Because if you actually look at my
20 -- I have two opinions in there. My opinion of the -- one
21 of them is not affected at all by this, but the other one
22 where we -- where I indicate that it's my opinion that the
23 overall recovery would be \$1.6 to \$2.1 billion, I actually
24 rounded down in reaching that. So what actually happens,
25 when you actually make the correction, if you round off the

1 corrected numbers, it's still \$1.6 to \$2.1 billion, so the
2 change is within the rounding of what I did. If you look at
3 my opinion number -- opinion number one has the \$1.6 to \$2.1
4 -- I'm sorry, opinion number two is \$1.6 to \$2.1 billion.
5 That's unchanged, and it's unchanged because it was rounded.

6 THE COURT: Okay, thanks.

7 MR. GENENDER: Thank you, Your Honor, Paul
8 Genender on behalf of the Debtors. I know I have the last
9 live witness of the day, and I will be as quick as I
10 possibly can. And I have between \$50 and \$90 million less
11 to deal with than I did a few minutes. May I approach with
12 a book, Your Honor, for the Court and the witness?

13 THE COURT: Sure.

14 DIRECT EXAMINATION OF RON GREENSPAN

15 BY MR. GENENDER:

16 Q Good afternoon, Mr. Greenspan.

17 A Good afternoon.

18 Q You have a book in front of you that has nine tabs, and
19 in the left pocket has a copy of your deposition, in the
20 even that we need it, okay?

21 A Yes, sir.

22 Q Mr. Greenspan, you're not licensed to render an opinion
23 of value, are you?

24 A I am not.

25 Q You were tasked here with determining the value of the

1 Debtors' real estate interest in a liquidation. Is that
2 right?

3 A Amongst other things, yes.

4 Q You just mentioned Tab -- Exhibit 10 to your report.
5 Can you turn to Tab 5 of the notebook in front of you? That
6 is the exhibit you were just referring to in amending your
7 testimony to the Court, correct?

8 A That is correct.

9 Q So those -- that is a summary of your conclusions, save
10 for the adjustments that you just announced to the Court at
11 the commencement of your testimony, correct?

12 A That is correct.

13 Q Okay. You made various assumptions in arriving at your
14 opinions, correct?

15 A Yes.

16 Q One of those assumptions you made in deriving your
17 values is that Sears has 20 to 22 months to dispose of its
18 assets. Is that right?

19 A Yes.

20 Q And that includes leaseholds, correct?

21 A Yes.

22 Q You'd agree that the amount -- that the amount a seller
23 would reasonably expect to realize on real -- on a real
24 estate asset can be affected by how much time the seller has
25 to dispose of that asset, correct?

1 A Yes.

2 Q It's fair to say that the value of real estate assets
3 that Sears could dispose of would be lower if it only had
4 four months to dispose of them, correct?

5 A No. As I explained to you, I don't believe the value
6 of the asset changes, which is what you just asked me. But
7 rather, as I explained before, the amount one can realize is
8 usually detrimentally affected by doing a forced
9 liquidation, a fire sale.

10 Q The proceeds would be less, correct?

11 A Correct.

12 Q Thank you. Appreciate the clarification. You've not
13 attempted to offer any opinion as to how much the real
14 estate proceed -- real estate assets at issue would realize
15 as proceeds if Sears had only four months to dispose of
16 them, correct?

17 A Correct.

18 Q Are you aware that the Debtors have a court-ordered
19 deadline of May 13 to assume or reject an executory contract
20 for non-residential real estate property?

21 A Unless extended by the landlord, that's correct.

22 Q And have you, for the record, that is docket entry 776,
23 have you seen that order?

24 A I don't recollect having read it.

25 Q Okay, but you understand that that's in effect and a

1 ruling of this Court?

2 A It's my understanding.

3 Q Okay. The comparables you used to inform the discounts
4 you applied in your conclusions do not include previous
5 wind-down situations, do they?

6 A Well, they -- I mean, as I explained to you, everything
7 I've done is informed by my 35 years in this business and
8 thousands and thousands of sales. But specifically, I would
9 put this as the disposition of assets by an out-of-business
10 retailer.

11 THE COURT: I'm sorry, I didn't hear, by a?

12 MR. GREENSPAN: By an out-of-business retailer,
13 not specifically looking at bankruptcy situations.

14 THE COURT: Okay.

15 Q Mr. Greenspan, can you turn to your deposition in front
16 of you and turn to Page 77, please? Do you have it in front
17 of you?

18 A Yes.

19 Q Do you see 77, Line 10, I ask you, "Do the comps that
20 you used in connection with your work include previous wind-
21 down situations?" On Line 13, can you please read your
22 answer?

23 A "I don't believe so."

24 Q Thank you. You acted as an advisor to the Committee of
25 the Unsecured Creditors in the Toys "R" Us matter, isn't

1 that right?

2 A Correct.

3 Q And the Toys "R" Us bankruptcy resulted in the
4 liquidation of the retail business, correct?

5 A Correct.

6 Q As part of that liquidation, the company attempted to
7 dispose of the real estate assets.

8 A That is correct.

9 Q Have you reviewed Paragraph 30 of Mr. Welch's
10 declaration, which is in your binder at Tab 2?

11 A I have.

12 Q Okay, well let's take -- I want to be -- I want to give
13 you an opportunity to know for sure. Can you turn to, under
14 Tab 2, Paragraph 30? In particular, I want to call your
15 attention -- it's highlighted, but a particular -- the part
16 at the bottom of the page which starts, "For example," on
17 Page -- on Page 12.

18 A Yes.

19 Q Okay. So you have reviewed that paragraph, correct?

20 A I have.

21 Q Okay, and have you reviewed Paragraph 36 in Mr.
22 Meghji's declaration, which is Tab 3 of your binder,
23 Paragraph 36?

24 A I did, but it's been a while.

25 Q I could not hear you, sir. I'm sorry.

1 A I said I did review it, but it's been a while.

2 Q Okay. Well, please, take a moment to refresh your
3 recollection.

4 A I've read it.

5 Q Thank you very much. So you see each of -- each Mr. --
6 each of those witnesses' testimony, and in the Toys "R" Us
7 liquidation, only around 35 percent of the leases sold,
8 correct?

9 A Correct.

10 Q And you see their testimony that of the leases that did
11 sell, they only real -- they only sold for around 44 percent
12 of their appraised dark value. You see that?

13 A Yes.

14 Q Which would mean a discount of 56 percent, correct?

15 A That's the math.

16 Q Okay. You agree that Sears stores are bigger than the
17 Toys "R" Us stores, correct?

18 A In general, yes.

19 Q And you'd also agree that in deriving the value of
20 Sears and Kmart leaseholds in your work, that you applied
21 discounts as low as 20 percent, but no higher than 40
22 percent, correct?

23 A Correct.

24 Q Notwithstanding the Toys "R" Us data, correct?

25 A Actually, I would look at this and say probably because

1 of the Toys "R" Us data.

2 Q Okay, but you're not -- your range is 20 to 40 percent,
3 correct?

4 A Correct, because you have to realize, when you start
5 with how big the appropriate discount is, it's the quality
6 of what you're discounting off of, and I can talk to you
7 about the data that -- the two stores.

8 Q Well, I'm just asking what the range of your discounts
9 is, 20 to 40 percent, correct?

10 A Yeah, if you're asking me purely the numbers, yes. But
11 I will tell you that what you're discounting off of is
12 radically different.

13 Q Thank you for your answer. In fact, with the exception
14 of offices, all discounts that you applied in your analysis
15 were between 20 and 40 percent, so all leaseholds, is that
16 right?

17 A That is correct.

18 Q And that's on your report, Page 19, Exhibit 9, correct?

19 A Correct.

20 Q And you did this notwithstanding the Debtors may have
21 only 4 months, and not 22 months, to dispose of all
22 leaseholds, correct?

23 A I think as I made clear, both in the report and my
24 deposition, that I'm not assuming four months as the period
25 of time. That would be a fire sale, a liquidation sale, and

1 I am not attempting to indicate what the proceeds would be
2 under those circumstances.

3 Q You were in the Court -- well, I think I saw you in the
4 back that -- to hear Mr. Burian's testimony, right?

5 A I was.

6 Q And he referred to Toys "R" Us as, what, did he call it
7 an auction?

8 A There was three-wave auction, yes.

9 Q And you testified to that fact as well, right?

10 A In my deposition I did.

11 Q Right, and he was talking about a situation here where
12 there might be an auction of the Sears real estate assets,
13 correct?

14 A I don't recollect that as part of his -- that's
15 certainly not the analysis that I operated on if you talk
16 about a fire sale auction. An auction can be a very valid
17 way to dispose of real estate, but it's the timing and the
18 manner in which the auction is conducted that's relevant,
19 not the methodology.

20 Q Okay. You understand that in Toys "R" Us, all the real
21 estate assets were leased, correct?

22 A I'm sorry, were leased?

23 Q Leased.

24 A Yes, unlike here, where you have fee simple.

25 Q Thank you. And you understand in this situation, in

1 this case for Sears, that the industrial assets that are
2 owned here are mostly encumbered, correct?

3 A Mostly encumbered, you have -- I mean, you have I think
4 probably a multiple of 10 times the number of industrial
5 assets here than we had in Toys.

6 Q You can't point me to one comparable scenario where a
7 bankrupt company sold the volume of real estate assets as
8 are at issue here, of leases, in a short period of time and
9 got 75 percent of the market value, correct?

10 A I told you I couldn't do that because there's no
11 precedent for this bankruptcy (indiscernible) you're selling
12 400 assets (indiscernible) those type of sales regularly.

13 Q Thank you. And, actually, you also can't point me to a
14 comparable scenario where a bankrupt company sold this
15 volume of leases in a short period of time and even got less
16 than 75 percent of the market value, correct?

17 A That's correct. There haven't been this amount sold in
18 a short period of time in a bankruptcy.

19 Q Okay, and I want to look -- go back to Tab 5, which is
20 your summary numbers, if you can, please. And your
21 testimony is that if you look at the low, mid, and high,
22 that on average, on average, okay, the high is a 15 percent
23 discount, the mid is a 25 percent discount, and the low is a
24 35 percent discount, correct?

25 A As I explained to you, I didn't use those numbers, 15,

1 25, or 35 in anything, but that is the arithmetic average.

2 Q Correct, and I want to be -- I'm going to be fair to
3 you. That's not where you intended to go, but that's where
4 your numbers, on Exhibit 9, 20 to 40 percent, those ranges,
5 that's what they led to when you compiled them all together,
6 correct?

7 A That is correct.

8 Q Thank you. And you'd want to gather as much
9 information as possible about current market conditions
10 before making any assumptions or determining appropriate
11 discounts in your valuation. Is that right?

12 A Within the available time and information constraints,
13 that's correct.

14 Q Sure. And if information relevant to your assumptions
15 was available, you'd want to consider it, correct?

16 A Yes.

17 Q But you didn't consider any available information about
18 the Bon-Ton liquidation, did you?

19 A I did not.

20 Q And you didn't do any research on that, did you?

21 A I have not.

22 Q And you didn't do any research to determine that there
23 was information publicly available that from May of last
24 year through January of this year, it took seven months to
25 dispose of just seven leases, correct?

1 A I have not done that research, nor can I confirm that's
2 accurate.

3 Q Okay, well, and if I represent to you that there is
4 public information about that, would you accept my
5 representation?

6 A There's a newspaper article.

7 Q If there was? Do you want to see it?

8 A No, no, I said there is a newspaper article. I know
9 that.

10 Q Okay, and you've read the same information?

11 A I've read the newspaper article, yes.

12 Q Okay. Okay, do you have any reason to dispute the
13 newspaper account?

14 A I -- a lot of reason to dispute that it's relevant, but
15 I have no reason to dispute the fact they've sold seven
16 stores.

17 Q Okay, and you agree that if you applied that pace to
18 this case, it would take decades to dispose of the leases in
19 this case, correct?

20 A Sure, if the number was longer, it would take longer,
21 and if the number was bigger, it would take shorter.

22 Q And nothing about Bon-Ton has informed any of your
23 opinions in this case, correct?

24 A No, I've subsequent done research, and I can talk to
25 you about that. So, but nothing -- nothing about Bon-Ton

1 informed my opinion. I've subsequently done research, and I
2 can explain to you the (indiscernible) and why, frankly, it
3 probably supports what I projected here.

4 Q Well I only get to cross-examine you on those opinions
5 that you put forth, and you updated your declaration last
6 night, correct?

7 A No, I updated the numbers.

8 Q Correct. You were deposed last Thursday, and your
9 report was updated last night. You made an adjustment
10 today, which I understand and I appreciate, but no mention
11 of Bon-Ton in your opinions, correct?

12 A Correct.

13 Q And no mention of Sports Authority, either, correct?

14 A Correct.

15 Q Thank you. I want to go back to Tab 5 again or maybe
16 we're still there. You have numbers next to encumbered
17 assets; do you see those?

18 A Yes.

19 Q When calculating the value of Debtor -- in Debtors'
20 real estate assets, you didn't make any assumption with
21 regard to the debt on the encumbered assets, did you?

22 A I did not.

23 Q And you know that there's debt on those properties,
24 correct?

25 A I do.

1 Q And you understand that the debt on those, the nominal
2 debt on those properties exceeds the values that you have
3 listed on your Exhibit 10, which is Tab 5 in the notebook.

4 A The nominal debt does.

5 Q Yes. By way of example, the nominal debt, if you look
6 at the second line of -- where it says included by Debtor,
7 are 502 million for unencumb- -- for encumbered does from
8 the higher end, the nominal debt is more than 502 million,
9 correct?

10 A That's my understanding. I was dealing with the assets
11 side and other people were dealing with the liabilities
12 side.

13 Q Understood. But if you look at the encumbered numbers
14 on the two sections of Exhibit 10, in each situation, the
15 nominal debt will be higher than the high end of your range,
16 correct?

17 A Again, that's my understanding the nominal debt is.
18 I'm not dealing with the liabilities side.

19 Q Wouldn't you agree that the proceeds that you ascribed
20 to encumbered assets is really not relevant to a proceeds
21 discussion?

22 A No, I think it is potentially relevant. The reason I
23 included it is twofold, is, one, as you'll see up on the
24 top, the debtor included 18 assets in their analysis of
25 proceeds available, 18 encumbered assets. If they're going

1 to include encumbered assets, I can only do an apples-to-
2 apples comparison if I also include encumbered assets.

3 Secondly, as I understand it -- as I said, I'm not
4 handling the liability side -- there's likely to be a
5 challenge to the priority and/or recharacterization of some
6 or all of that debt, in which case -- let me just finish my
7 answer.

8 Q Okay.

9 A In which case, I do think that the asset values may be
10 of relevance to this Court.

11 Q Those proceeds would now flow to creditors in a
12 winddown, would they?

13 A Again, I'm not dealing with -- I have no opinion. I'm
14 not dealing with that side of the --

15 Q Okay.

16 A -- analysis.

17 Q I appreciate your candor. In terms of methodology,
18 generally speaking, where third-party values were available,
19 you used that value to inform estimated proceeds, correct?

20 A Yes. Discounted, of course, but I did use it to inform
21 it.

22 Q Sure. One of your reports, quote/unquote, biggest
23 flaws that you know with respect to the Debtors' analysis is
24 that their estimated proceeds exclude 555 unencumbered
25 properties; is that right?

1 A That's right. I explain in my report my understanding
2 of that.

3 Q Yes. And you actually say, you call it flaw no. 1, and
4 it's on Page 9 of your report, which is behind Tab No. 1,
5 where you state, the Debtors winddown analysis subscribes
6 value to only 484 out of 1054 properties owned or leased by
7 the Debtors, a total of 570 properties, 54 percent of the
8 portfolio by asset count, 555 of which are unencumbered are
9 ascribed zero value in the Debtors' model. Do you see that?

10 A Yes.

11 Q You called that a flaw, right?

12 A Correct.

13 Q And those 555 assets listed on your Exhibit 10 behind
14 Tab 5 under unencumbered, and you have 555 listed and you
15 say, Debtors' estimated proceeds nothing, and you have your
16 range of 126 to 165, correct?

17 A Correct.

18 Q Of those 555, Mr. Greenspan, your work, your valuation
19 assigns a value of zero to 438 of those 555 properties,
20 correct?

21 A Correct, and the distinction is the second --

22 Q Is that correct?

23 A -- sentence you didn't read. I said correct.

24 Q Thank you.

25 A And the distinction is the second sentence you did not

1 read, which is the flaw.

2 Q Okay. Bottom line is, 80 percent of those 555
3 properties, both you and the Debtors assign a value of zero,
4 right?

5 A I did an analysis and concluded -- the Debtor actually
6 assigned an n/a to it, not a zero. The Debtor did not look
7 at those. And when we inquired why did you not analyze
8 those, they said they didn't have the information. So the
9 Debtors did not do an analysis of those, and I said that's
10 the flaw. I did an analysis of them, and what we found was,
11 in fact, 80 percent had not value not because we didn't
12 look, but because we found the value, 20 percent did, and
13 it's a pretty stunning \$160 million.

14 Q I didn't ask you why. I asked you what. So wouldn't
15 you agree that both you and the Debtors agreed that at least
16 80 percent of those 550 unencumbered assets have no value?

17 A No.

18 Q Is that correct?

19 A No. The Debtor ascribed n/a. They didn't duly come to
20 a conclusion of zero. There's no evidence whatsoever what
21 the Debtors think that value is.

22 THE COURT: Let's not spend any more time on that
23 point.

24 MR. GENENDER: Got it. Thank you, Your Honor.

25 Q I want to talk about the 20 percent of those 555 to

1 which you do, you did ascribe value. And you ascribe a
2 value has a midpoint of \$145 million; is that right? I'm
3 looking at Tab 5, Exhibit 10. Tab 5.

4 A I'm sorry.

5 Q You there?

6 A You need me to point out a discount offer in 36
7 million.

8 Q You have a range of up -- between 126 and \$165 million,
9 with a midpoint of 145 for those properties, correct?

10 A Correct, after discount.

11 Q After discount. Is your adjustment that you made when
12 you announced to the Court, does that affect that range as
13 well?

14 A No, because the only adjustment we made was to the
15 (indiscernible) appraisal.

16 Q Thank you. I want to talk about one of the 117
17 properties, okay? I'm going to ask you to look at Tab 7 in
18 the notebook in front of you, and I'm going to -- this
19 relates to the Pearl City Distribution Center. Okay? Do
20 you see that? And what we've done is we've taken an excerpt
21 from one of your spreadsheets. All right? And it relates
22 to distribution center in Pearl City, Hawaii. And you see
23 that it listed a lease expiration of April 30th, 2028, and
24 it has a last expiration of April 30th, 2038. It says that
25 it's 299,000 square feet. Do you see that?

1 A Yes.

2 Q Speaking with n/a, you list an annual rate of n/a,
3 correct?

4 A Correct.

5 Q You list a market rent of \$8.50, correct?

6 A Correct.

7 Q And the source is your firm, FTI?

8 A From the research we did, correct.

9 Q Thank you. And you have a rent arbitrage, which is the
10 difference between annual rent and market rent, correct?
11 You list it at \$8.50. Okay, do you see that?

12 A I see that.

13 Q And then if you go down to the second line, you have a
14 low, midpoint, and high valuation of this asset between
15 \$13.1 and \$16.8 million, with a midpoint of just under 15
16 million. Do you see that?

17 A Correct.

18 Q That's your math, right?

19 A Yes.

20 Q Did you do this work yourself or someone on your team
21 do it?

22 A Someone on my team did the actual modeling.

23 Q Okay. Did you go ahead and check -- did you check this
24 one?

25 A I did a -- we have a QC team that looked at all of

1 them. I personally checked some. I can't tell you if I
2 personally checked this one.

3 Q So you'd agree that this 13.1 to 16.8 accounts for
4 roughly, maybe more, than 10 percent of the \$126 to \$165
5 million amount that you list on Tab 5 of your Exhibit 10,
6 correct?

7 A It's approximately 10 percent.

8 Q Just this one property, right?

9 A Approximately.

10 Q Okay. Mr. Greenspan, are you aware that the actual
11 rent of this property is not zero, but, in fact, it's \$6.36?

12 A That's the issues you -- looking at this, you can't
13 tell whether when they put in market rent that that's
14 actually the calculation of the arbitrage number or not.

15 Q Well, but it's -- your report says -- your report says
16 market rent \$8.50 and has n/a next to actual rent, doesn't
17 it? That's your calculation, right?

18 A And it may be the reason they put n/a in there for
19 actual rent is because they put the arbitrage rent in for
20 the market rent.

21 Q Do you know that or are you speculating?

22 A Knowing what my team did, that would be my informed
23 impression. I would have to go back and look at the full
24 work papers, but that's what I would conclude if there's n/a
25 for annual rent, the 8.50 is in there under market.

1 Q N/A means not applicable, right?

2 A That's correct. It's not applicable to this analysis
3 because what they're showing is the arbitrage under market
4 rent.

5 Q Well, Mr. Greenspan, I want to -- there's a distinction
6 between your sworn testimony and your assumption. I want to
7 ask which one it is.

8 A It's sworn testimony and it's an assumption. The
9 reason being is, you see this is a ground lease. A ground
10 lease, you don't pay on the same basis as what you rent the
11 facility out at. One, you've got a lot of square feet in
12 the ground. Often, the ground lease is set as either a
13 specific amount, a fixed amount, or dollars per square foot
14 of the ground. Whereas, when you're re-leasing out, you're
15 actually renting the building. Let me just finish. You're
16 not renting the ground lease.

17 Therefore, very often, since you don't have an
18 apples-to-apples on a spreadsheet, you can put in n/a as the
19 annual rent because the person isn't renting the ground, and
20 you put the arbitrage amount in the market rent and it's the
21 same as what's being shown there as the arb.

22 So looking at all -- everything put together, it
23 would not surprise me. It would be my expectation that
24 you've got the arbitrage shown there as market rent.

25 Q Are you aware that the actual rent for this property is

1 \$6.35 -- \$6.36 a square foot?

2 A Per square foot for the ground or per square for the
3 building?

4 Q Can you turn to Tab 6 -- Tab 8, please, in the binder
5 in front of you? And this is an excerpt and the document
6 itself is behind. And for the record, this is marked as
7 Debtors' Exhibit 132, Bates Numbered Sears UCC-138236
8 through 243. Looking at the first page, do you see where it
9 lists the rent, the annual rent of \$1,900,611 per year?

10 A For the ground, not for the building.

11 Q Okay. And you see that the denominator there would be
12 299,000 square feet for a rent of \$6.36 per square foot?

13 A Again, you're dividing the rent for the ground, which
14 is much, much larger, by the square footage of the building.

15 Q Where --

16 A That's apples-to-oranges.

17 Q Where does your report indicate what the actual market
18 rent is, as opposed to any -- strike that. Is your -- do
19 you have an analysis that you did that indicates the market
20 rent is anything other than \$8.50 for this property?

21 A I cannot give you a hundred percent assurance sitting
22 here on a specific property out the 1,054 we did. But I
23 believe we, in fact, did do a market rent study for the
24 299,000 square feet for this facility; that's how we came to
25 our value.

1 Q Are you 100 percent certain?

2 A As certain as I can -- knowing our methodology, I'm
3 99.9 percent certain. As I said, we did 1,054 assets. I
4 don't recollect. And that was a -- that's what we did on
5 every asset, so I'd be very certain.

6 Q As a matter of math, Mr. Greenspan, since you are here
7 as an expert, if the actual rent were \$6.38 -- \$6.36 and the
8 market rent were, as your spreadsheet indicates, \$8.50, that
9 would have an arbitrage instead of only \$2.14, correct?

10 A As I said, you're comparing apples-to-oranges, but the
11 math is right.

12 Q Thank you. And if that were the arbitrage on a lease
13 of this size with this much term, that would significantly
14 affect -- that one valuation would be significantly less, if
15 not zero, compared to \$13 to \$16 million for that one
16 property, correct? If that math were correct.

17 A If the math -- it certainly wouldn't be zero. You
18 still have the \$2.30 arbitrage for the remaining term of the
19 lease, but it certainly would be less.

20 Q And you heard -- did you hear -- were you here for Mr.
21 Welch's testimony?

22 A Yes.

23 Q And sometimes when you're -- when the arbitrage was
24 just a couple of dollars, that means that there's not any
25 value in that means that there's not any value in that lease

1 because there's not enough spread to -- for a subtenant to -
2 - sublessor to realize value; did you hear that testimony?

3 A That testimony would not -- I heard his testimony --
4 would not be applicable to this building where it's 300,000
5 square feet. So even two and a half bucks is almost a
6 million dollars a year of arbitrage. You still have a lease
7 term going out to 2038. Twenty years at two and a half
8 dollars a foot comes to a million -- a million dollars times
9 the net in those 20 years, comes to be a \$20 to \$30 million
10 spread. That's enough to get peoples' attention and to buy
11 it.

12 Q But if your math is wrong, you're off by three-fourths
13 at least.

14 A No, that math is just under 2.50 a foot.

15 Q Okay.

16 A 2.50 a foot times 300,000 square feet is three-quarters
17 of a million dollars a year -- three-quarters of a million
18 dollars a year is what you'll hypothesize in the arbitrages
19 -- for 20 years is \$15 million, close difference. You'd run
20 that through a present value calculation and your number's
21 probably \$7 million/\$8 million as a net press in value.

22 Q Mr. Greenspan, are you telling this Court that \$2.14
23 arbitrage would yield \$7 million, but an \$8.50 arbitrage
24 would yield 13 to 16? That math doesn't add up, does it?

25 A Actually, well, I gave -- well, where the difference is

1 the 13 to 16 and you'd have discount it off of the market
2 value. As I said, every single one of these, we calculate
3 the value, which is what you would get using the revised
4 numbers. If you want to use revised numbers, again, market
5 value. I then discounted, as we talked about since this is
6 a lease, it's discounted another 20 to 40 percent to get
7 down to the values that we're showing.

8 Q Can you turn to Tab 9 in the book in front of you?

9 Let's try -- I'm going to wrap this up. You see that's your
10 Exhibit 10 with some -- with some annotations on it?

11 A Yes.

12 Q The top annotation is for the 8.53 to 1.123 billion
13 reflect the average -- okay, consistent with your testimony
14 -- the average discounts of 35, 25 and 15, correct?

15 A That's correct.

16 Q Okay. The -- where the bracketed debt numbers, there's
17 a bracket that says less than the debt; that reflects your
18 testimony that the nominal debt exceeds those numbers for
19 those encumbered properties, correct?

20 A No. Well, my testimony was I understand the nominal
21 debt exceeds --

22 Q Fair enough.

23 A -- the encumbered property values, but I don't know for
24 sure.

25 Q Fair enough, okay. And then I very artfully put an

1 arrow around the midpoint of 145 million and put CEG, the
2 distribution center that I'm sure we talked about enough.
3 Do you see that?

4 A Yes.

5 Q And I guess the only other adjustment we would have to
6 make would be what you testified earlier at the adjustment
7 between \$50 and \$90 million to the overall numbers, 50 to 70
8 or 70 to 90 of your overall numbers because of the adjusted,
9 which we appreciate, in connection with Mr. Welch's
10 testimony, correct?

11 A Correct. So just to be clear on that, so if we're
12 talking about only the unencumbered, which is what you've
13 circled here, it's 50 to 70. The mid, which you're pointing
14 at, the number would be 60 million.

15 Q Fair enough, and I appreciate that. So if it's 50 to
16 70 for the unencumbered, let's put a real fine point on
17 that. The debt -- you have the Debtors' proceeds for
18 unencumbered being 634 million, and if you took away 50
19 million from your low end of the range, 853, that would be
20 803. So you're talking about a difference on the low end of
21 the Debtors' number of 634 and your number of 803; is that
22 right?

23 A On the very lowest end, that's correct.

24 Q Thank you.

25 MR. GENENDER: Pass the witness. Thank you, Your

1 Honor.

2 THE COURT: Okay. Redirect?

3 MR. CHAPMAN: Yes, Your Honor.

4 REDIRECT EXAMINATION OF MR. GREENSPAN

5 BY MR. CHAPMAN:

6 Q Mr. Greenspan, you just were asked a number of
7 questions about the FTI's valuation of the Pearl City
8 Distribution Center.

9 A Yes.

10 Q Do you have any opinions on the Pearl City Distribution
11 Center valuation, in addition to those you've already
12 expressed in your question and answer with Mr. Genender?

13 A Yes, I was.

14 Q Do you have any additional observations on the Pearl
15 City Distribution Center valuation, in addition to those
16 which you already made in connection with your testimony
17 from Mr. Genender?

18 A My comment would be, it is a very, very attractive
19 property. It's eminently, eminently marketable, and I'm
20 probably being very conservative on that asset. I can't
21 tell for sure, but it would be -- I would be all but certain
22 that we're looking at the delta, what the arbitrage is to
23 showing it at market because we put n/a for the square
24 footage, you can't calculate.

25 If we had put a number in there and there's n/a

1 for the square footage, which is common on a ground lease,
2 because the ground lease -- the facility is 299,000 square
3 feet; the ground lease is -- the ground we're renting is
4 probably well over a million square feet and so, you can't
5 do that calculation. You put n/a and you put the spread in
6 there under the market rent.

7 Q Do you recall being asked questions about the timeline
8 over which you assumed Sears would be able to dispose of its
9 real estate assets? And I believe you said something in the
10 neighborhood of 20 to 22 months; is that correct?

11 A That is the outside date of the very last disposition.

12 Q Why did you make that assumption?

13 A Made the assumption that what we're looking at the
14 alternative with respect to these assets to the sale that's
15 being contemplated here is presumably a value maximizing
16 process to monetize the real estate as the alternative. I
17 don't believe there's any reason to do a fire sale.

18 The analysis I did assumed, on the fee simple
19 assets, there's no deadline on the fee simple. And on the
20 lease assets, as is very common, those assets that have
21 value, and we're looking over a billion dollars of value in
22 the leased assets; those assets that have value, we put into
23 a process that allows a reasonable time to monetize. And
24 that would be something that can typically affect a
25 liquidating trust.

1 It allows you -- you assume the leases that have
2 value and you go ahead and market those in a reasonable
3 process and JLL gave reasonable marketing values for those
4 that they would market over a reasonable period of time.

5 Q You're aware that Mr. Welch assumed a four-month
6 disposition period, based upon the May 13th assumption of
7 rejection deadline?

8 A Well, I mean, interestingly, we know he did both. He
9 did both the market value and a liquidation value. He
10 explained that his liquidation value assumed a four-month
11 period of time. We also gave a full market value, which
12 showed that there were hundreds and hundreds and hundreds of
13 millions of dollars of value being left on the table in
14 order to accommodate a fire sale.

15 Q And to be clear, why do you believe that a period of
16 greater than four months is appropriate?

17 A Because that's the only way to get a commercially
18 reasonable value for these assets. And Mr. Welch agrees and
19 Mr. Meghji's testimony was the same.

20 Q You were asked a series of questions with respect to --
21 I hope I get the (indiscernible) correct -- but the 555
22 unencumbered properties to which you said the Debtors did
23 not value into which you did value; is that fair?

24 A That's correct.

25 Q And, of course, the questioning was that in 80 percent

1 of those cases, you ascribed a zero value, correct, or
2 approximately 80 percent?

3 A After doing the research, yes.

4 Q Okay. And approximately 20 percent, you concluded
5 there was value there, correct?

6 A That's correct.

7 Q And what was the basis for your conclusion that there
8 was value in that approximately 20 percent of the assets,
9 the 555 assets the Debtors didn't value?

10 A Again, we used the same methodology we used in all the
11 assets. If the Debtors had actually acquired and paid for
12 valuations, we looked at them. If they looked reasonable,
13 we used those as a basis and then discounted them. So
14 within those assets were 17 major properties that they had
15 Cushman & Wakefield value. Cushman & Wakefield came back
16 and said those assets were worth \$167 million. The Debtors
17 still didn't even put in an effort to value or to use those.

18 On all the others, we used our same methodology.
19 And if we did not have a valuation that the Debtor had paid
20 for, we did our own analysis and looked at market values,
21 market comparables, did our analysis, and then discounted
22 all of that.

23 Q In your view, why is it appropriate to rely on the
24 Cushman & Wakefield appraisals?

25 A Cushman has been the Debtors' long-time real estate

1 consultant. They prepared extensive valuations. They know
2 the portfolio very well. They were relatively recent
3 appraisals. So absolutely not reason not to incorporate
4 their values, albeit discounted. Also, Cushman & Wakefield,
5 before the Debtor prepared multiple values on those assets,
6 one of those values was the as-dark value, which is lower
7 market value, and we started with that; we used the as-dark.
8 But their professional opinion was what this asset was worth
9 with no Sears in it and we then further discounted that 20
10 to 40 percent.

11 Q You may have just answered this question. In a
12 winddown scenario, what assumption do you make about whether
13 the properties are lit or dark?

14 A Well, on a winddown, I mean, the proper assumption
15 should always be the dark; as lit, they're generally worth
16 more and they're not lit.

17 Q And if they're dark, what assumptions do you make about
18 carrying costs?

19 A If those carry costs have to be paid until there's a
20 transaction, or else until the lease is rejected if it's a
21 lease.

22 Q And any assumptions about the quantum of carrying
23 costs?

24 A Well, for our purposes, we qualified those. And the
25 carrying costs we assumed were the full underlying rent and

1 the canvas property taxes and insurance.

2 Q You were asked questions earlier about Bon-Ton; do you
3 recall that?

4 A Yes.

5 Q Why didn't you include bond time in your analysis?

6 A I don't think it's has any relevance to what we're
7 dealing here. Bon-Ton was converted to a Chapter 7, and the
8 Debtors' estate just wholesale bulked out the assets to a
9 consortium that included Tiger, and I think also included
10 A&G, the entity that's disposing of -- that the Debtors
11 retained. But they bought all the assets in bulk, including
12 all the stores; the overwhelming percentage of them were
13 leased. They are in literally what are known as the dying
14 towns. It's a Western Pennsylvania chain. It's
15 predominantly in the small towns in the upper Midwest.

16 I've subsequently taken -- actually did an
17 analysis. And the Sears towns, we rate the markets --
18 major, minor, and tertiary and minor. Sears has 55 percent
19 of the lease in major markets, such as the Sears here. Bon-
20 Ton had fewer than a third in major markets, and a great
21 number, double the number of Sears in the bottom category,
22 which are going to be virtually unobtainable, unsaleable
23 assets in today's market.

24 Q Final question on Toys "R" Us. First of all, what was
25 your involvement in Toys "R" Us?

1 A We're the advisers to the committee.

2 Q And what was the timeframe of the disposition of real
3 estate in the Toys "R" Us bankruptcy?

4 A The -- it was ultimate fire sale. It was intending to
5 be a going concern. A terrible Christmas season and they
6 abruptly had to liquidate. They did it, the sale, in three
7 waves. Two of the waves, essentially from the time the bid
8 procedures order was entered to the bid deadlines, one was
9 30 days, the other was 40 days. I mean, truly a fire sale
10 for these types of assets. The third wave was 60 days, and
11 they got considerably better returns on the third wave.

12 I mean, it's no surprise the realization, but
13 importantly, everybody's talking about the 35 percent they
14 got bids on that they sold. I've -- my numbers only assume
15 34 percent of the Sears leases are sold; that I'm actually
16 assuming a fewer percent of the Sears leases are able to be
17 monetized from the Toys leases that were monetized in that
18 process.

19 And, I mean, there's no question the Toys sale was
20 an absolute fire sale. And also, Sears would get less if
21 they fire sale the assets than what I've predicted, but
22 that's not the way they should be sold if you really want to
23 monetize appropriate value for the stakeholders.

24 MR. CHAPMAN: Nothing further. Thank you.

25 MR. GENENDER: Your Honor, we have nothing further

1 for this witness.

2 THE COURT: Okay. You can step down, sir.

3 MR. GREENSPAN: Thank you.

4 THE COURT: Okay. I think that concludes the
5 committee's presentation, recognizing obviously that I have
6 Mr. Kniffen's declaration.

7 MR. QURESHI: That was the only reason for which I
8 rose, Your Honor, is to move that into evidence. But other
9 than that -- and Mr. Greenspan's as well, but other than
10 that --

11 THE COURT: All the declarations are moved in, are
12 admitted into evidence as direct testimony. The one caveat
13 on the ruling was on the portion of the hearsay ruling. I
14 sustained Mr. Meghji. And there were no objections on
15 either side as to the witness declaration designations,
16 right? So that's part of the evidentiary record. Okay. So
17 you all are planning coming back here at 10:00?

18 MR. QURESHI: We have been told 11:00 AM, Your
19 Honor, but whatever time the Court has available.

20 THE COURT: I do have a couple of -- you know,
21 plan to be here at 10:00. I -- we may start at, like,
22 10:30. It's not a huge calendar tomorrow.

23 MR. QURESHI: Very well.

24 THE COURT: Okay. You're absolutely right. My
25 crack assistant here, who tole me that Ms. Lee moved the

1 morning calendar to 2:00. So you guys can get here at 9:00.

2 Okay?

3 MR. QURESHI: So what time are you starting, Your

4 Honor?

5 THE COURT: 9:00.

6 MR. QURESHI: 9:00, okay.

7 THE COURT: Yes. Mr. (indiscernible) and Mr.

8 (indiscernible), can I just see you for a brief period in my

9 chambers?

10 (Whereupon these proceedings were concluded at

11 5:11 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya
Ledanski Hyde

Digitally signed by Sonya Ledanski
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